(17,370.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 264.

THE AMERICAN SUGAR REFINING COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA AND JOHN BREWSTER, STATE TAX COLLECTOR, SECOND DISTRICT, PARISH OF ORLEANS, STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from civil district court	1	1
Rule to show cause	2	1
Petition of State tax collector for State license, interrogatories annexed, and order thereon	4	3
Rule continued	6	4
Exception and answer of defendant	7	4
Note of evidence	8	6
Admissions by Mr. Semmes and Mr. McCaleb	9	6
Exception submitted and case continued	10	7
Opinion of the court overruling exception	10	7
Exception overruled	17	11
Questions asked of Mr. Geo. S. Eastwick, manager of the American Sugar Refining Co., and answers	18	11
Testimony of George S. Eastwick	19	12
Statement by Mr. Semmes	21	13
Agreement as to samples and photographs	22	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 9, 1899.

	Original.	Print.
Admissions touching photographs and samples	22	13
Testimony of John McFetteridge	22	14
D. D. Colcock, for defendant	41	24
George S. Eastwick (recalled)	42	25
Continuance	46	27
Continuance	47	28
Continuance	47	28
Continuance	47	28
Continuance	48	29
Continuance	48	29
Continuance	48	29
Continuance	49	30
Continuance	49	30
Continuance	50	30
Submission	50	31
Judgment	50	31
Judgment signed	51	31
Motion for appeal	51	32
Clerk's certificate attached to transcript	52	32
Transcript of appeal filed	54	33
Cause argued and submitted	54	33
Opinion of the court	55	33
Final judgment	61	38
Petition for rehearing	61	38
Rehearing granted	64	41
Motion for oral argument	64	41
Cause submitted	65	41
Opinion of the court	65	42
Final judgment (on rehearing)	92	62
Stipulation waiving legal delays to apply for rehearing	93	63
Petition for writ of error and order granting writ	93	63
Copy of writ of error	94	64
Bond for writ of error	96	65
Assignment of errors	97	66
Agreement of counsel as to transcript	98	66
Clerk's certificate	98	67
Certificate of the chief justice	99	67
Writ of error	100	68
Citation to State of Louisiana and acceptance of service	103	69
Citation to State tax collector and acceptance of service	105	69

a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

AMERICAN SUGAR REFINING COMPANY, Plaintiff in Error,
versus
THE STATE OF LOUISIANA and JOHN BREWSTER, State Tax Collector, Second District, Parish of Orleans, State of Louisiana, Defendants in Error. } No. 12877.

Thomas J. Semmes for plaintiff in error.
E. H. McCaleb, Jr., for defendants in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America returnable at the city of Washington, D. C., within thirty (30) days from the seventeenth (17th) day of March, A. D. 1899.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Appeal from the honorable the civil district court, division C, from judgment rendered May 30, 1898, and signed June 3, 1898.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925. Civil District Court, Parish of Orleans, Division C—Honorable F. A. Monroe, Judge.

E. H. McCaleb, Jr., Esq., attorney for the State of Louisiana, plaintiff and appellant.
Thomas J. Semmes, Esq., attorney for The American Sugar Refining Co., defendant and appellee.

Rule on the American Sugar Refining Company to Show Cause Why They Should Not Pay $21,000 as a License for Carrying on Business.

2 Filed November 18, 1897, and entered on the minutes of same date.

Civil District Court, Parish of Orleans, Division C—Honorable F. A. Monroe, Judge.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

To the honorable the judge of said court for the parish of Orleans:

The petition of John Brewster, tax collector of the 2nd district of the city of New Orleans, through Edwin H. McCaleb, attorney-at-

law, appointed by his excellency the governor of Louisiana to aid the tax collectors of the parish of Orleans in the collection of licenses for said parish, and on suggesting to the court that the American Sugar Refining Company is conducting the business of refining sugar & molasses at Levee, Front & N. Peters St. without any license from the State of Louisiana, and that its gross receipts exceed the sum of two million five hundred thousand (2,500,000) dollars for each year of 1892, 1893, 1894, 1895, 1896, and 1897 during said years within which said business was conducted, and on further suggesting that all persons who conduct any business without obtaining a license from the State before the first day of March of each year are declared delinquent, and on further suggesting to the court that there is due by defendant to the State of Louisiana the sum of twenty-one thousand (21,000) dollars, with 2 % per month interest from March 1st, 1892, on thirty-five hundred dollars and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1895, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred
3 dollars from March 1st, 1896, and 10 % attorneys' fees on said amount and interest; with 2 % per month on thirty-five hundred dollars from March 1st, 1897, and 10 % attorneys' fees on said amount and interest, as a license for the years 1892, 1893, 1894, 1895, 1896, and 1897, together with first lien and privilege on the property of defendant, movable and immovable:

It is ordered that defendant, American Sugar Refining Co., thro' its proper officer, do show cause, on Monday, —— —, 1897, at 11 o'clock a. m., why it shall not pay twenty-one thousand (21,000) dollars to the State of Louisiana for a license for the privilege of conducting the above-mentioned business during the years of 1892, 1893, 1894, 1895, 1896, and 1897, with 2 % per month interest on thirty-five hundred dollars from March 1st, 1892, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1893, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1894, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1895, and 10 % attorneys' fees on said amount and interest; with 2 % per month interest on thirty-five hundred dollars from March 1st, 1896, and 10 % attorneys' fees on said amount and interest, and with 2 % per month interest on thirty-five hundred dollars from March 1st, 1897, and 10 % attorneys' fees on said amount and interest, and all costs of these proceedings, or be enjoined and restrained from the carrying on of said business until the said license, interest, ten per cent. attorneys' fees thereon, and costs of court be paid.

And that defendant, American Sugar Refining Co., be
4 required to show further why this rule should not be made absolute and judgment rendered in favor of the State of Louisiana for twenty-one thousand (21,000) dollars, with interest as

above set forth, ten per cent. attorneys' fees, and costs of court, and said injunction be perpetuated.

Petition of State Tax Collector for State License, Interrogatories Annexed, and Order Thereon.

Filed November 18, 1897.

Civil District Court for the Parish of Orleans.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINERY CO. } No. 54925.

To the honorable the civil district court for the parish of Orleans:

The petition of John Brewster, tax collector of the 2nd district of the city of New Orleans, through Edwin H. McCaleb, attorney-at-law, appointed by his excellency the governor of Louisiana to aid the tax collectors of the parish of Orleans in the collections of licenses for said parish, respectfully represents:

That in the cause numbered and entitled as above proceedings have been taken against the above-named defendant to collect the amount due by said defendant to the State of Louisiana as license for carrying on business, as set forth in a rule which has been taken herein upon said defendant, and to compel said defendant to pay the State license for carrying on said business, and that the answers of said defendant to the annexed interrogatories are material
5 and necessary to enable plaintiff to make out its case herein.

Wherefore petitioner prays that this petition be filed, and that the above-named defendant be ordered to answer, under oath and categorically, in open court, on Monday, the 29th day of November, 1897, at 11 o'clock a. m., each of the annexed interrogatories in order that the plaintiff may make use of the said answers in support of the claim and demand aforesaid for State license due by said defendant, and that in default of such answers being made by said defendant the answers to said interrogatories be taken for confessed.

(Signed) E. H. McCALEB, JR.,
Attorney for Plaintiff.

Interrogatories.

1. Have you not been conducting and carrying on business during the year- 1892, 1893, 1894, 1895, 1896, & 1897, as set forth in the rule taken on you in these proceedings, and are you not now conducting and carrying on said business?

2. Do not your gross receipts from said business exceed the sum stated in said rule?

3. *Were* not your gross receipts from said business during each of the years 1892, 1893, 1894, 1895, 1896, & 1897 exceed two million five hundred thousand (2,500,000) dollars?

4. Do you not owe your State license for 1892, 1893, 1894, 1895,

1896, & 1897 for conducting and carrying on business, as set forth in said rule, and does not the total sum due by you amount to the sum claimed in said rule, with interest on said sum, at the rate of two per cent. a month, from March 1st, 1892, ten per cent. thereon for attorneys' fees, and all the costs of these proceedings?

6 5. Do you owe any State license for the years 1892, 1893, 1894, 1895, 1896, & 1897; if so, how much do you owe, and for carrying on or conducting what business?

6. Are not all the statements and allegations in the rule taken herein on you true? If any allegation be untrue or incorrect, set forth the error and correct the same.

Order.

Let this petition be filed and let a copy thereof and of the annexed interrogatories and of this order be served upon the above-named defendant, and it is ordered that said defendant answer in open court on Monday, the 29th day of November, 1897, at 11 o'clock a. m., under oath and categorically, the interrogatories herein propounded, and in default of such answers being made by said defendant, let the answers of said defendant to said interrogatories be taken for confessed.

New Orleans, November 22nd, 1897.

(Signed) F. A. MONROE, *Judge.*

Rule Continued.

Extract from the Minutes of Division C.

MONDAY, *November* 29, 1897.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

7 By consent of counsel and upon proper showing, the rule in this case fixed for this day was continued to Monday, December 6th, 1897, at eleven o'clock a. m.

Exception and Answer of Defendant.

Filed December 6th, 1897.

Civil District Court, Division C.

THE STATE OF LOUISIANA
vs.
THE AMERICAN SUGAR REFINING CO. } No. 54925.

Now comes the defendant company and excepts to the proceeding against it by rule, and for exception says that the tax collector, at

whose instance this rule has been taken, has no authority to proceed by rule, because the defendant company has never been entered on the license register which tax collectors are required by law to keep, nor has the defendant company ever been placed on the list of delinquent license-payers which the tax collector is required by law to furnish to the attorney appointed by the governor to enforce the payment of licenses of delinquents.

In case the foregoing exception be overruled, and not otherwise, and re-averring its right to insist on said exception, this defendant for answer to said rule says:

That its business of refining sugar and molasses is exempt from the payment of any license tax for the years mentioned in the rule, because its said business is and always has been that of refining sugar and molasses and none other, and as such it is and always has been one of those manufacturers enumerated in article 306 of the constitution as entitled to exemption from license taxes, and, furthermore, its business is and always has been conducted
8 by means of mechanical appliances & apparatus, and it is further exempted by said article 306 from payment of license taxes as a person engaged in a mechanical pursuit.

This defendant further says that the act No. 150 of 1890 violates the Constitution of the United States and is void in so far as it attempts to impose a license tax on this defendant, because said act denies to this defendant the equal protection of the laws of the State, inasmuch as said act does not impose equally a license tax on all persons engaged in the business of refining sugar and molasses, but discriminates in favor of planters who refine their own sugar and molasses and in favor of planters who granulate syrups for other planters during the rolling season, and therefore said act conflicts with the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving a person of his property without due process of law and from denying to any person within its jurisdiction *of* the equal protection of the laws.

Wherefore this defendant prays to be hence dismissed with costs.

(Signed) THOS. J. SEMMES,
Att'y for Defendant.

STATE OF LOUISIANA, }
Parish of Orleans. }

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

9 Present: Mr. E. Howard McCaleb, Jr., att'y for the State; Mr. Thos. J. Semmes, attorney for the American Sugar Refining Company.

Note of Evidence Taken in the Above Numbered and Entitled Cause on the 6th Day of December, 1897, Before Hon. Frank A. Monroe, Judge.

Admission by Mr. Semmes & Mr. McCaleb, counsel for def't and pl't'ff.

It is admitted that the tax collector did not enter the defendant company as a license-payer upon his license register; nor did he report said company as a delinquent to the attorney appointed under the act No. 150 of 1890, except in the year 1896 the attorney verballed suggested to the tax collector to report said company as a delinquent, which he did verbally. The attorney then notified the company of its alleged delinquency in 1896 for that year. In 1897 the attorney notified the company three days before this suit was brought, but in that year the company was not entered as a license delinquent on the license register in the collector's office, nor placed upon the delinquent list submitted to the said attorney in the month of April, A. D. 1897.

The counsel for pl'ff objected to the admission of any evidence on the exception, on the grounds that it is *res inter alios acta* and irrelevant.

The court overrules the objection and allows the admission above mentioned to be received.

To which ruling the counsel for pl'ff excepted and reserves the note in lieu of a bill of exception.

Correct.

T. J. S.

E. H. McC.

10 (Endorsed:) Civil district court. State of Louisiana *vs.* Am. Sugar Refining Co. Note of evidence. Filed December 7th, 1897. Joe Garridel, d'y clerk.

Exception Submitted & Case Continued.

Extract from the Minutes of Division C.

MONDAY *December* 6, 1897.

Present: Hon. F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

In this case, after hearing pleadings and evidence and arguments of E. H. McCaleb, for plaintiff, and T. J. Semmes, Esq., for defendant, on the exception this day filed by defendant, the court took said exception under advisement, and the rule for license was continued, to be again fixed for trial.

Opinion of the Court Overruling Exception.

Filed January 3rd, 1898.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

11 The State, through John Brewster, tax collector, proceeds by rule to collect from the defendant an amount of money aggregating, in principal, $21,000.00 for licenses, at the rate of $3,500 per annum, for the years 1892, '3, '4, '5, '6, '7, together with certain costs and charges, the averments of the rule being that defendant has during said years been engaged in the business of refining sugar & molasses in New Orleans; that its gross receipts exceed $2,500,000 per annum; that it has obtained no license, but, upon the contrary, became delinquent with respect thereto upon March 1st of each of said years.

Respondent excepts on the ground that "the tax collector at whose instance the rule has been taken has no authority to proceed by rule because the defendant company has never been entered on the license register which tax collectors are required by law to keep, nor has the defendant company ever been placed on the list of delinquent license-payers which the tax collector is required by law to furnish to the attorney appointed by the governor to enforce the payment of licenses by delinquents." Reserving the benefit of this exception, the defendant answers, claiming exemption under article 206 of the constitution and attacking the statute under which the license is claimed, upon the ground that it is in violation of the 14th amendment to the Constitution of the United States.

The exception alone is now before the court, & for its purposes the following written admission is made, counsel for the State, whilst admitting the facts, reserving his rights under certain objections (which were overruled) to the admission of the evidence: "It is admitted that the tax collector did not enter the defendant
12 company as a license-payer upon his license register, nor did he report said company as a delinquent to the attorney appointed under the act No. 150 of 1890, except in the year 1896 the attorney verbally suggested to the tax collector to report said company as a delinquent, which he did verbally. The attorney then notified the company of its alleged delinquency in 1896 for that year. In 1897 the attorney notified the company three days before this suit was brought, but in that year the company was not entered as a license delinquent on the license register in the collector's office, nor placed upon the delinquent list submitted to said attorney in the month of April, A. D. 1897."

The proposition that it is a condition precedent to the right to proceed by rule to collect licenses as contemplated by act 150 of 1890, that the tax collector shall first enter the name of the delinquent upon the tax register and shall also include the name of such delinquent in the list to be furnished to the attorney, is founded not upon any specific language to be found in the statutes, but upon an inference or theory of construction which, upon a deliberate consideration of the statute in question, cannot, in my opinion, be sustained.

The obligation to pay a license is imposed, by sec. 1 of the act, upon every person engaged in business except those expressly exempted by the constitution.

The time within which the license is to be paid and the date at which it becomes delinquent and subject to costs & penalties is fixed by section 2. The various sections following sec. 2, up to sec. 18, are devoted to the establishment of a basis as to amounts upon which licenses are to be paid. Sec. 18 then provides "that if
13 any business shall be conducted without a license in cases herein provided the officers whose duty it is to issue licenses shall, through the attorney herein provided for, on motion in the proper courts, as provided in the constitution and which shall be without deposit or advanced costs, take a rule on the party or parties doing such business to show cause on the fifth day, exclusive of holidays, after the service thereof, which may be tried out of term time and in chambers and shall always be tried by preference, why said party or parties should not pay the amount of the license claimed and penalties or be ordered to cease from further pursuits of said business until after having obtained a license; and in case said rule is made absolute the order thereon rendered shall be considered a judgment in favor of the State for the amount decreed to be due by the defendant for license and penalty and costs, heretofore & hereinafter provided for, and shall be executed in the same manner as other payments, and every violation of the order of court shall be considered as a contempt thereof and punished according to law."

It will be observed that the right to proceed by rule thus specif-

ically authorized is subject by the terms of the section containing the grant to but one condition which can be considered a condition precedent, to wit: That a business upon which the statute imposes a license shall have been conducted without such license. The question then remains whether such right is made dependant upon other conditions by subsequent provisions of the law.

Section 19 provides that the only legal evidence that a license has been paid shall be the license itself, issued by the auditor, with a reservation of the right to make oral proof in case of its loss or destruction.

14 Section 20 requires the tax collector to keep a book in which he shall record the sworn statements of persons subject to license.

Section 21 authorizes the collectors to administer oaths, &c.

Section 22 provides "that the tax collectors * * * are hereby required to keep a license register in which they shall enter the names of every person, association of persons, business firms or corporations, with the trade, profession, vocation, calling or business pursued, the class and graduation of the same, the amount of the license hereon, and the date of the collection or payment thereof. On the 31st day of December of each and every year the said tax collectors shall make and forward to the auditor of public accounts a full and complete transcript of said license registers, a copy of which transcript the auditor of public accounts shall lay before the General Assembly at its regular session of each year, and shall file the same in his office for his future reference or use."

There is no intimation in this section that the register thus required to be kept shall be completed as a condition precedent to the effort which the collector is required to make to collect the licenses. Upon the contrary, the register is required to show, among other things, the payment of the licenses, which, in many cases, can only be arrived at after the legal proceedings necessary to enforce such payment. The section in question provides a method of accounting by the tax collector, not for what he may do, but for what he has done, and does not suggest the idea that the failure so to account shall have the effect of relieving the license debtor of the obligation to pay, imposed by preceeding sections, or of relieving the tax collector and the attorney of the obligation to enforce

15 such payment, since it is this very payment that the tax collector is to render an account of by means of his tax register.

Section 23 imposes a penalty upon the tax collector for violating any of the provisions of the act.

Section 24 provides "that the governor of the State, immediately after the promulgation of this act, shall designate for each parish an attorney-at-law, whose duty it shall be to aid the tax collector or tax collectors in the parish for which he is appointed in the collection of the licenses provided for by this act; and upon all licenses & penalties collected through the agency of said attorney the delinquent owing the license shall pay a commission to him.

* * * * * * *

"On the first day of March of each year the tax collector shall deliver to the attorneys herein provided for a complete list of all the delinquent license-payers, together with their location and kind of business, and the attorney shall individually proceed to collect same in accordance with this act, and if not collected within thirty days from date of delivery of lists by the collectors of taxes, it shall be the duty of said attorneys to render a written report giving the reason for non-collection to the collectors, whose duty it shall be to forward such report to the auditor of public accounts.

"Provided: that in the parish of Orleans, the said attorney shall receive a commission of five per centum upon the aggregate amount of license & penalties so collected and paid over to the tax collector, and no more."

Section 25 provides "that if any tax collector or officer
16 whose business it is to issue State licenses shall through incompetency, negligence, or fault on his part, fail to enforce the procuring or rectifying thereof by persons required to have them, he shall be responsible on his bond for all damages to the State arising therefrom."

It can hardly be said that the failure of the tax collector to include in the list which he is thus required to furnish the attorney upon the first of March of each year the name of a particular person engaged in business relieves such person of the liability for the license, since, in the first place, it is not so intimated, and the negligence of a State officer in enforcing the payment of a tax is not one of the grounds of exemption provided in the constitution; and, in the second place, the act contemplates & provides for the payment of license by persons who go into business after the first of March, and whose names could not, therefore, appear upon the list to be furnished at that date. It is evidently the purpose of the act that the attorney, whose appointment is provided for, should aid the tax collector in the collection of all licenses which become delinquent, whether the individual owing such lincense goes into business at the beginning of the year or after March 1st or after July 1st, in which latter case he owes but half year's license. True, it is the duty of the collector to make a list of all those who are in business before March 1st, but his failure to discharge this duty, whilst it may subject him to a penalty if the State suffers damages, does not relieve him of the obligation to collect the license if he can, nor does it relieve the attorney of the obligation to aid him in such collections.

In McGuire *vs.* Vogh, 36 A., 812, the supreme court said:
17 "The mode of or machinery for collecting taxes upon property is by the sale of it, if after twenty days' notice payment is not made. A license could not be collected by the sale of an occupation, and it is upon an occupation that the license is imposed. For that reason, doubtless, a rule is authorized to be taken on motion against the party who has not obtained his license to show cause why he shall not stop his business—Acts 1880, p. 152—and we see no reason why the rule should not also embrace the collec-

tion of the license, although it is not prescribed as the mode of collecting licenses, nor is it the only machinery that can be used."

And in State *ex rel.* Paquet *vs.* Judge, 49 A., 764, the proceeding by rule to collect a license under act 150 of 1890 was sustained.

There is nothing in the act which limits the right to proceed by rule to the license of the current year; hence, it being assumed for the purposes of the present exception that licenses were due and are unpaid for the years '92, '93, '94, '95, '96, and it being ascertained that the collection of licenses which are due and unpaid may be enforced by rule, I am of opinion that the right to enforce collection in that manner may be exercised as well with respect to licenses which are past due as well for preceding years as for the current year; at all events, if, as in the instant case, the delinquent is still engaged in the business for which he owes the license, so that the injunction contemplated by the law can be applied.

The exception should therefore be overruled.

Exception Overruled.

Extract from the Minutes of Division C.

18 MONDAY, *January* 3, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING Co. } No. 54925.

For the reasons assigned in the written opinion of the court this day delivered and filed, the law being in favor of plaintiff and against defendant,—

It is ordered and decreed that the exceptions of the defendant be dismissed and overruled at its costs.

Questions asked of Mr. Geo. S. Eastwick, manager — the American Sugar Refining Company, New Orleans, by Mr. McCaleb, representing the State of Louisiana.

Q. 1. Does the total value of sugar purchased by your company for each year from 1892 to 1896, inclusive, of the grades shown by samples # 1, # 2, # 3, # 4, # 6, # 7, amount to or exceed $2,500,000?

A. 1. Amount will exceed $2,500,000.

Q. 2. If you subtract from your total sales for each year from 1892 to 1896, inclusive, the value of your sales of cube sugar, will the remainder amount to or exceed $2,500,000?

A. 2. Amount will exceed $2,500,000.

GEO. S. EASTWICK, *Manager.*

19 Civil Dist. Court, Div. "C."

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 54925.

Testimony and Notes of Evidence Taken on the Trial on Monday, January 10th, 1898, Before the Hon. F. A. Monroe, Judge.

Present: E. Howard McCaleb, Jr., for pl'ff.
" Hon. T. J. Semmes, for def't.

Index.

Geo. S. Eastwick..... 19
Jno. McFetteridge..... 22
D. D. Colcock..... 41
Geo. S. Eastwick..... 42

GEORGE S. EASTWICK, Esq., a witness, who, being first duly sworn, did testify as follows:

Direct examination by Mr. MCCALEB:

Q. What is your name?
A. George S. Eastwick.
Q. You are the agent and manager of the American Sugar Refining Company?
A. I am manager and agent of the American Sugar Refining Co.
Q. Have you not been conducting and carrying on business during the years 1892, 1893, 1894, 1895, 1896, and 1897, as set forth — the rule taken on you in these proceedings, and are you not
20 now conducting and carrying on said business?
A. We have been carrying on the business of refining sugar during those years.
Q. Have you not also refined molasses during those years?
A. Yes; refined sugars, molasses, and concretes, etc.
Q. Do not gross receipts from said business exceed the sum stated in said rule?
A. Yes, sir.
Q. Were not your gross receipts from said business during each of the years 1892, 1893, 1894, 1895, 1896, and 1897 in excess of two million five hundred dollars?
A. Yes; they do exceed that; yes, sir.
Q. Do you not owe State license for 1892, 1893, 1894, 1895, 1896, and 1897?
A. No, sir; we don't. We claim exemption.
Q. For conducting and carrying on business as set forth in the rule?
A. No, sir.
Q. Does not the total sum due by you amount to the total sum claimed in said rule, with interest on said sum, at the rate of two

per cent. a month, from March 1st, 1892, ten per cent. thereon for attorneys' fees, and all the costs of these proceedings?

A. No, sir.

Q. Do you owe any State license for the years 1892, 1893, 1894, 1895, 1896, and 1897? If so, how much do you owe, and for carrying on and conducting what business?

A. I do not.

21 Q. Are not all the statements and allegations in the rule herein taken on you true?

A. The statement in regard to the business which we have carried on. The statement in regard to the amount of business we have answered in substance.

By Mr. Semmes:

Q. That is true?

A. Yes; that is true. The statement in regard to the fact that we owe license we hold is not true, because we claim exemption under the laws of the State of Louisiana.

By Mr. McCaleb:

Q. Exemption as what?

A. As manufacturers.

No cross-examination.

By Mr. Semmes: We now propose to establish the fact that the refining of sugar—that is, the license demanded here—is a manufacture, and therefore we are manufacturers, and as such are entitled to the exemption specified in the constitution; for that purpose I have had photographs made of the machinery and samples brought here of all of the various sugars, showing each process it goes through before it becomes an article of merchandise—before it is refined sugar.

I have also brought the superintendent of the refinery for the purpose of having him give his testimony as to these various processes. The photographs are numbered and the samples are numbered, and I would ask the witness when he testifies in regard

22 to any photograph or any sample to speak of it by number when he alludes to it.

Agreement.—It is agreed that in case of an appeal that the samples and the photographs may be carried up to the Supreme Court without being copied into the record, the sole object of the testimony being to explain the methods pursued which result in the production of refined sugar as an article of consumption.

Admissions.—It is admitted that the photographs are correct representations of the machinery in the refinery, and that the samples are true and correct samples of the saccharine matter which is worked up and manufactured in the refinery.

JOHN MCFETTERIDGE, Esq., a witness on the part of the defendant, who, being first duly sworn, did testify as follows:

Direct examination by Mr. SEMMES:

Q. Mr. McFetteridge, you are the superintendent of the American Sugar Refining Company of this city, are you not?

A. Yes, sir.

Q. What has been your experience in the refining of sugar?

A. I have had experience running over fifteen years in the North and the past year in Louisiana.

Q. So you are thoroughly familiar with the business?

A. Yes, sir.

Q. The manufactory here consists of large buildings?

A. Yes, sir; a number of large buildings which grouped they comprise the refinery.

Q. A vast amount of machinery——

23 A. A very large amount of machinery.

Q. These photographs truly represent the pieces of machinery?

A. Yes, sir.

Q. Now will you please commence from the beginning and go through the whole process by which crude sugars are converted into refined sugar, and do so deliberately, and in making the explanation exhibit the samples to the court and the pictures of the machinery and explain the operation.

A. Well, necessarily some of the samples and the photographs, to make a th-rough explanation, will have to be shown together. Now to begin with the process in the refinery: we receive the sugar either from plantations in the State or from abroad, wherever produced, in barrels or bags, packages, in whatever way it may be packed. Our first process is to melt every bag or barrel of sugar so received in suitable vessels specially constructed for the purposes of melting sugar and bringing it to a tendency for refining. The first exhibit is a photograph of these melters and is No. 24.

By Mr. SEMMES:

Q. Explain the photograph.

A. Well, perhaps, if I am to explain it I had better take the photograph and show it. (Witness points out place on photograph.) Raw-sugar melters. This is the melter here, shown here, the end view and the side view of the melter, the sugar being elevated to the floor above.

By the COURT: The witness indicates a vessel which the court now marks "1" in black ink as being the melter.

The WITNESS: There are suitable storage apparatus—storage apparatus and steam water storage—and they are connected

24 with pumps run by power with shafting to pump the sugar after it is dissolved by these melters and conducting it to the upper stories of this building for another operation.

By Mr. SEMMES:

Q. Now show to the court that melted liquid sample after it passes through the process of melting.

By the COURT: Haven't you something showing the sugar before that?

A. Yes; we have a number of raw sugar. The first sample is No. 1. It is called Louisiana clarified sugar.

By the COURT: From No. 1 to what point contain samples of crude sugar?

A. From No. 1 down to and including No. 11.

By the COURT: The one with a liquid you don't call that crude sugar?

A. Yes, sir.

Q. Samples from No. 1 to No. 11 contain crude sugar and liquid before you have done anything with it?

A. Yes; as we receive it. Sample No. 12 would show this crude sugar melted before clarification and filteration.

Q. In the melter?

A. Yes; after it has been brought to the density we require it.

By Mr. SEMMES:

Q. Do you put all these sugars indiscriminately through the melter?

A. It would not be my practice to put them in all indiscriminately. It results better to follow high with lower grades, although they have to go through the same process.

25 By the COURT:

Q. It would give better results to melt each grade different if there is a mark between grades?

A. Yes; after this melting process.

Q. I see a sample, No. 5, I should imagine—what is that?

A. That is what is called the third grade of raw sugar.

Q. Is this the most inferior grade of sugar that you receive?

A. Yes; I judge by looking at it it is. We have some fourths even poorer in quality than these thirds. After this sugar has been melted and pumped to the upper story of one of our buildings we conduct an operation that we call clarification. This is done in blow-ups, and I have an exhibit of these raw-sugar blow-ups which is No. 25 of our exhibits.

By the COURT:

Q. What is a blow-up, and where is it on this vessel?

A. Here; iron tanks containing steam.

By the COURT: The witness indicates rear large iron tanks on photograph No. 25, which speaks for itself and need not be marked as blow-up.

The WITNESS: By the aid of suitable re-agents we coagulate the impurities and feed the liquid for the process of future filteration through these bags.

Q. Which bags?

A. I only show the tops of them.

By the COURT: The witness indicates on what appears to
26 be the floor of the apartment on this photograph No. 25 what he denominates bag filters, tops of bag filters, and the word "bag" is written on one of them in black ink.

By Mr. SEMMES:

Q. Show the court one of those bags.

A. This will illustrate the bag filterer. This coupling is on top of the head and the liquid is strained through these bags.

Offer of bag.—The defendant, through counsel, offers in evidence the bag exhibited to the court by this witness, and it is understood that all these photographs and samples, together with the bag just exhibited to the court and offered in evidence, are to go to the Supreme Court, in case of an appeal, in their original form.

The WITNESS: After leaving these blow-ups the liquid is strained through these bags, the purpose being to remove the mechanical impurities, the insoluble impurities, that exist in the liquid form of the sugar, and we exhibit here as photograph marked 26, and marked 26 by us, a picture of one of these bag filters. We have shown the top of the bag and the bag itself and now we show the casing.

By the COURT: The casing which contains these bags?

A. Yes, sir.

By the COURT: Where is it here?

A. Here is one side view; it is an iron box.

27 By the COURT: The witness indicates what appears to be a box or series of boxes, iron boxes, beginning in the foreground and extending back in this picture, which he states are the casings containing the bags, which together with these casings constitute the bag filters.

By the COURT: Continue, Mr. McFetteridge.

A. The process following this straining through the bags is the filtering process through bone-black filters, which are iron vessels in our establishment about twenty feet in height and ten feet in diameter. It was impossible for me to obtain a picture of the bone-black filters on account of the darkness in the place, and so we have taken a blue-print drawing. It is No. 28 of our exhibits, bone-black filters.

By Mr. SEMMES: We offer on the part of the defendant and ask to be filed this blue print of the bone-black filters, marked No. 28.

The WITNESS: This speaks for itself. Now, I might speak of the process and show these samples in connection with this fluid. This liquid, after it leaves the bag filters, is strained through the filters containing this burnt animal bone-black itself, and also after the liquid leaves the bone-black. I have already shown the liquid after going in the bag filters. Sample No. 14 is a sample of this burnt animal bone-black. This is used as an agent for decolorizing and removing impurities.

By the COURT: Have you any sample there of this liquid
28 after it passes through the bag filter and before it goes through the bone-black?

A. No, sir; the color is not perceptibly improved in the bag filter; it is not improved.

Q. The bag filter is clear of matter held in suspension?

A. Yes, sir.

By the WITNESS: Do you care, Judge, to see No. 14, the bone-black?

The COURT: No, sir.

The WITNESS: No. 15 is an exhibit of this raw sugar after being melted, clarified in the blow-ups, strained through the filters, and decolorized by bone-black before boiling in vacuum pan.

By the COURT: Do you bring all the grades of sugar from the lowest to the highest to that condition?

A. Sir?

Q. This contains no color?

A. No, sir; some of the lower grades would not on the first filteration come up to that color.

By the COURT: The sample No. 15 is a jar containing colorless liquid concerning which the witness is now testifying.

Q. Some of the other grades you have to filter more than once?

A. Yes; to bring it to this color. The next photograph we have deals with the machinery that is used for revivifying the bone-black that has been used for the purpose of filteration.

29 By Mr. SEMMES: Please explain what you mean by revivifying.

A. This bone-black, after being used for some length of time, more or less dependent upon the condition of the sugar that is run through it, becomes exhausted and unfit for further use; consequently it is necessary, by the application of greater or lesser quantity of hot water, to be run through these bone-black filters, to thoroughly wash this bone-black, and after this is done the bone-black is brought back to a condition fit for use again while the reburning of the bone-black in what are called bone-black kilns.

By Mr. SEMMES: Under great heat?

A. Yes, sir.

Q. What degree?

A. Between seven and eight hundred.

Q. Fahrenheit?

A. Yes, sir.

By the COURT:

Q. What is that No. 29?

A. Photograph No. 29 is bone-black filters—bone-black kilns, and in these kilns are the separate retorts in which the bone-black is burned and used again. In the course of time this bone-black is thoroughly unfit for work, because the pores of the bag become choked and it has to be replaced by additions of new black from time to time.

By the COURT: What is bone-black—animal bones reduced
30 to a black powder by being burned or charred?
A. Yes, sir; decidedly.

By Mr. SEMMES:

Q. Made of bone?

A. Yes, sir; made of animal bones. I have omitted one important photograph in connection with the bag filters that I wish to show. That is protograph No. 27, showing the scum press, in which the impurities that are collecting in the bag filters are collected in this scum press and burned out of the house, and the object of the scum press is to recover whatever existing liquid may be in those impurities. Of course, taking the bag out of the bag filters mixes with sand. A certain amount of liquid is in there, and we desire to recover that liquid, leaving the raw cake.

By the COURT:

Q. How do you get all that stuff out of the bags?

A. By washing the bags in a tub and pumping the residue of this stuff out, and it leaves the dry scum.

By Mr. SEMMES:

Q. Have you a sample of the scum?

A. Yes, sir; sample No. 13 is a sample of this scum and mud that is taken from the sugar in this raw state and finally thrown out as worthless, containing no more sugar, and as valueless.

Q. That comes out of the scum press?

A. Yes, sir. We exhibit this to show the amount of impurity and dirt that we recover in this way and that is taken from the sugar. I may say that frequently we take as many—depending, of course, on the amount of work we are doing—as seventy and eighty
31 barrels of this dirt and scum daily, containing four hundred pounds to the barrel.

By the COURT:

Q. What is done with that?

A. Carted away into waste. It has no value that we know of.

By Mr. SEMMES:

Q. Wouldn't it be good as manure?

A. It might be, but we pay for removing it. We got no return for it. Photograph No. 30 is the vacuum pan. It is an exhibit of the first stage of manufacture, after this liquid has left the bone-black filters. It is the vacuum pans of the refinery for the crystallization of this filtered liquid into grains.

Q. What happens to the vacuum pans?

A. This filtered liquid is made into grains. The vacuum pan has a vessel, shown here, containing a series of coils, and the steam is turned on the pans.

Q. Boiled in a vacuum?

A. Yes, sir; at a low temperature. That is one of the operations

of the refinery in which a good deal of skill is required in filling this grain with liquid from time to time, and until finally the pan is finished.

Q. What do you call it, "finishing pan"?

A. Yes, sir; we term it a strike.

Q. What might happen by want of skill?

A. The grain might be formed very irregularly, so that it would not machine and the syrup would not be extracted. A man without experience wouldn't do. The man who desires to do this work must have a great deal of experience before he could be put
32 in charge of the pan and conduct the operations of the pan.

By Mr. SEMMES:

Q. Why?

A. Because after he gets a certain amount of grains in his pan he has to add these kinds of liquid, and he must know how to do it from experience.

By the COURT:

Q. Does the grain form in the pan?

A. Yes, sir.

Q. In the pan?

A. Yes, sir; in the pan itself. I will show you. Photograph No. 30 shows the vacuum pan itself. This is a sample, No. 16, in our exhibits of the magma.

Q. That is what you term this sugar at that stage in the process of refining?

A. Yes, sir; after boiling in the vacuum pan it is in that condition when it is dropped in the vacuum pan for the next stage of manufacture.

Q. Before going into the centrifugals?

A. Yes, sir; that, as I said before, requires a great deal of skill in the handling.

Q. That is what might be called a wet refined sugar?

A. Yes, sir.

Q. The next process is to dry it?

A. Yes, sir; but the grain is already perfectly formed here in the vacuum pan. The next exhibit and the next stage of manufacture is shown by our photograph marked No. 31, showing the centrifugal machines, shafting, pulleys, beltings, etc.

33 Q. What is the function of the centrifugals?

A. The function is to remove this magma after it leaves the pan and separate the grain and moisture, leaving the dry sugar.

Q. The syrup goes in one direction and the sugar dried remains in the machine?

A. Yes, sir. Here is an exhibit of the sugar from the machine, showing the contrast between the sugar leaving the vacuum pans and the sugar after being machined in the centrifugal. Our first photograph is marked No. 32, and it is a view of our cube or block sugar machine, showing the machine by which the sugar is pressed into these cubes, as shown in sample marked No. 19. The sugar

from the centrifugal machines comes into this cube machine, and by a system of pressing is pressed into these cubes. The sugar is pressed in those by an application of hot air for a certain number of hours, and is perfectly dry, as shown by the form shown. Exhibit No. 33 is a photograph of the granulation machine, and sample marked 21 is an exhibit of sugar after being thus granulated in these granulating machines. The machine is simply a cylinder drum. This extends six feet in diameter and twenty-five feet long, and by the force of hot air being forced through at a great rapidity, through these drums, and the drum being kept in motion, the sugar is thoroughly dried of any moisture remaining in it after leaving the centrifugal machine, and becomes a finished produce with an attractive appearance, such as shown in this sample, No. 21, which is a sample of finished granulated sugar.

Q. Is it merely a drying machine?

A. This is the drying machine. We have to conduct an
34 operation for making crystals in the vacuum pans.

Q. The main function of that apparatus is to finish the drying process?

A. Yes, sir; and make the grains more sparkling—more handsome in appearance for table sugar.

Q. It is what you might call a polishing machine, is it?

A. Yes, sir; sparkles.

By Mr. SEMMES:

Q. Until it reaches this process it does not have that sparkle?

A. No, sir; you cannot get a sparkle on any other grade of sugar.

Q. How do you get the uniformity of grade?

A. We have to do that in the vacu-m pan.

Q. Any sifting off?

A. Oh, yes; there's sifting that we do. We boil out any grain. They are large sifters.

Q. The large sifters produce it?

A. Yes, sir; because it will not allow any sugar to pass through except of this size.

By the COURT:

Q. Go right on, Mr. McFetteridge.

A. The next exhibit is photograph marked 34, showing our powder mills for making a special grade of sugar, known to the trade as powdered sugar, which is considered the finest grade for crystallizing usages by confectioners for crystallizing fruits, etc. This is a sample of the pulverizing press. It goes through 13 discs revolving at a great rapidity, shown in this protograph, No. 34, completely pulverizing the grain and leaving the product as shown in
35 the sample marked No. 20, powdered sugar.

By Mr. SEMMES:

Q. Is that after granulation?

A. Yes, sir; after leaving the granulators it is completed into powder and there is absolutely no moisture left in the sugar, and

both of these grades of sugars, granulated and powdered, undergo all these operations up as I described it. I have forgotten again to show one sample taken without a photograph. It is sample No. 18, which exhibits a sample of the syrup coming from the centrifugal machines. While drying the sugar in these machines this fluid is drawn from perfections or sieves in the machines and runs into tanks, where it is again pumped to the pans and taken in for boiling again through a number of skillful stages.

By Mr. SEMMES:

Q. That No. 18 is the moist sugar that comes from the centrifugal?

A. It has water and syrup between the grains of sugar as it comes through the vacuum pans and is thrown out as it goes through the sieves of the centrifugal. Sample No. 22 is a grade of sugar manufactured by us, known as confectioner's "A," in which the operation of granulating is omitted, and the grain is formed in the vacuum pans to the size desired by the trade after the operation of machining in the centrifugal is, of course, conducted, but after leaving that it is packed in barrels for shipment, and afterwards retains some little moisture.

By Mr. SEMMES:

Q. How do the confectioners use that sugar?

A. They use it in their confections. I am not familiar
36 with that.

Q. For what reason is that sugar manufactured?

A. It is to satisfy the trade. Eventually they get better results out of this sugar.

Q. I merely wanted to know why the confectioners particularly wanted that kind of sugar. What is the reason?

A. I don't know that; I can't tell you exactly; I don't know that confectioners entirely use that sugar. I wouldn't make any such statement as that. I know that it is called "confectioners' A." I know a larger grain of granulated sugar they buy for retail. The last exhibit we show as a product of our manufacture is marked No. 23, which is the molasses. That is one product of the sugar refinery and the final product that we make. I will show photograph No. 35, which is simply a feature of the refinery—steam boilers—by which we intend to illustrate the large amount of steam that we use in our business. It shows a selection of the steam boilers of the plant, showing grates and apparatus for feeding the fire; it is a view of our boiler-room. No. 36 is a photograph showing the engines, the engines for driving the beltings and pumps through the house, and also engines for the electric-light machinery; 36 "A" is also an exhibit of the engines of the refinery and a continuation of No. 36, and No. 37 is a photograph of the apparatus called the lily evaporator, its object being to bring to a greater degree of density the liquid resulting in sweet water and such as comes from the washing of the tubs and bone-black apparatus, by which the liquid is drawn

from the tubes and through which steam is passed and thickened up to the required density.

37 Q. This is the residue after refining?

A. Yes, sir; molasses, which is also a product of a refinery. I think I have exhibited all the manufactured samples in detail and the raw material from which we manufacture, which are all here as exhibits.

By the COURT:

Q. During what process in the stage of refining do you get this molasses?

A. This molasses that we produce?

Q. Yes.

A. No 23 is a sample. Here it is. We get it at the full final stage of the process. It is simply a substance containing sugar, but mixed with it are impurities that have been taken out at other stages of refining to such an extent as would prevent this from being turned out as granulated sugar.

Q. Where does that come from—the final stage?

A. In the process of crystallization. Finally—throwing off syrups from time to time—we finally get to the stage where we cannot boil it into grain, as it would not be profitable for the refinery to attempt to extract the sugar in this molasses; it would not justify us to go to the expense of obtaining the sugar remaining in it from it. I think I have described the process.

By the COURT:

Q. I think so, sir.

Cross-examination by Mr. MCCALEB:

Q. What is meant by the granulation of syrups?

A. What is meant by the granulation of syrups?

38 Q. Yes, sir.

A. I don't know of any such term, sir.

Q. The reason why is that the law specially exempts planters of granulated syrups. I want to understand that expression. Do you buy syrup and granulate it?

A. No, sir.

Q. You have no granulated syrup, properly speaking?

A. I would say no; not as a syrup.

Q. Now, Mr. McFetteridge, is that a good sample of Louisiana clarified sugar No. 1?

A. I believe so, as far as my knowledge of the sugar goes.

Q. Are there any finer or whiter clarified sugars than these?

A. I can't say; I haven't see- any that appear to be any better than that. As far as I see, this is very good sugar.

Q. From what product is this Louisiana clarified sugar made?

A. From cane juice.

Q. Is it made from cane juice?

A. Yes, sir.

Q. And No. 2 Louisiana clarified firsts, is that made from cane juice?

A. Yes, sir; that is also made from cane juice.

Q. The same evidence would apply to Nos. 3 and 4, Louisiana seconds and grocers' grade?

A. It would apply to all the sugar that is entering into it originally as cane juice. Lower grades is simply made from the workings of higher grades.

Q. Are these various sugars, Louisiana clarified No. 1, 2, 3, and 4, Louisiana open kettle No. 6 and 7, and also No. 11, marked here raw beet sugars, that are made, except the beet sugar, from

39 cane?

A. Yes, sir.

Q. Now, are they sold here at the sugar exchange?

A. I believe they are.

Q. Who generally buy these sugars—what class of people—at the sugar exchange?

A. I am totally unfamiliar with that stage of the business. My business is with the refinery.

Q. What do you call open-kettle centrifugal sugar?

A. It is a grade of sugar that is boiled as an open-kettle sugar, I presume, but instead of drying out the molasses it is run through centrifugal machines and dried in that way.

Q. Do you make that kind of sugar?

A. Oh, no.

Q. Do you make centrifugal sugar?

A. No, sir; we make nothing except the exhibits shown—except the refined products.

Q. Do you buy molasses and refine it?

A. Occasionally we might do so. I haven't done so recently.

Q. Who makes Louisiana clarified and these various sugars that have these impurities that you speak of?

A. Who make them?

Q. Yes; who make them?

A. Planters.

Q. Do you know the amount of the gross purchases of open-kettle and Louisiana clar-fied sugars during each of the years sued for?

A. No, sir; I have no knowledge of it whatever.

Q. You don't know?

40 A. No, sir.

Q. You know nothing of the gross receipts?

A. Nothing of the financial aspects of the case.

Q. Are these sugars, such as Louisiana clarified, are they used generally as an article of consumption?

A. I should say not.

Q. Don't you know, as a matter of fact, that this Louisiana clarified is used on breakfast and dinner tables?

A. I have never met it in my experience.

Q. You never met it?

A. No, sir.

Q. In fact, you testify that the only sugars used or consumed are

the sugars known as "Q" or block sugar, powdered sugar, granulated sugar, confectioners' "A," and this molasses?

A. I don't know that I made any such statement.

Q. Give me the names of some sugars, outside of these, which are used and which are articles of consumption?

A. I think the classes I spoke of there as our products, I think are the very largest in consumption, and, as far as my experience goes, it is the only class that has been presented to me while here in New Orleans as an article of consumption.

Q. I am not speaking of New Orleans.

A. A person can use any kind, but I can't speak with any knowledge of the subject as to what extent other grades are used.

Q. Are centrifugal sugars used to any extent?

A. I don't know any in consumption; I don't know. We use them to a very large extent in refining.

41 D. D. COLCOCK, Esq., a witness on the part of the defendant, who, being first duly sworn, did testify as follows:

Direct examination by Mr. MCCALEB:

Q. You are secretary of the sugar exchange?

A. I am.

Q. Can you state to what purpose Louisiana clarified sugars are applied?

A. For direct consumption or refining, as the case may be.

Q. Look at this sample of Louisiana clarified sugar marked No. 1.

A. Yes, sir.

Q. As a matter of general knowledge, is it consumed on the table?

A. I have ate it myself; not this year, but I have.

Q. Now, is raw beet sugar used on tables?

A. I have no personal experience of that matter.

Q. Who purchases all these grades of sugar known as Louisiana clarified, Louisiana refining first, Louisiana seconds or grocers' grade, and Louisiana open-kettle high No. 6, Louisiana open-kettle low No. 7? Do you know who generally purchase these kinds of sugars?

A. They go to the trade generally. The trade takes what it can get and the refinery what it can get.

Q. What do you mean by the trade?

A. I mean for curing meat or tobacco.

Q. Do wholesale grocers purchase Louisiana clarified and Louisiana refining first?

A. They do.

Q. They do?

A. Yes.

42 Q. To what extent?

A. I am not able to say.

Q. What grocers purchase open-kettle centrifugal sugars?

A. Well, there's very little of that grade made.

Cross-examination by Mr. SEMMES:

Q. Molasses is also used in the trade to sell, isn't it?
A. Yes, sir.
Q. Isn't the juice of the sugar cane used sometimes for sweetening?
A. I never heard of it.
Q. Cane syrup?
A. Yes, sir; cane syrup is used; yes, sir.
Q. So that every sort of sweetening is sold in the market?
A. Yes, sir; that is correct.

By Mr. MCCALEB:

Q. What is cane syrup?
A. Cane syrup is the juice of the cane clarified and boiled to about 42, I think.
Q. What juice?
A. Cane juice.

By Mr. SEMMES:

Q. This is a sample of it? (Witness shown sample No. 9.)
A. It looks like it.

GEORGE S. EASTWICK, Esq., recalled, testifies as follows:

By Mr. MCCALEB:

Q. Mr. Eastwick, what were the gross purchases of malada—
43 gross receipts derived from refined malada, or the effect of the product of all malada in your refinery? Can you get me those receipts?
A. This goes over a series of years. It is impossible for me. I don't know how much of those we have worked during any one year. This question is impossible for me to answer. I know they have entered into the uses of the refinery every year.
Q. Well, what were the gross purchases of Louisiana clarified refined first, grocers' grade first, and refined second? What were your gross receipts of purchases of those kinds of sugars; can you state?
A. No, sir; I haven't that data at hand. It exceeds the amount you state.
Q. Therefore, if you exclude melado——

By the COURT:

Q. What is melado?
A. It is the cane specially boiled to 42, and if it is boiled still further and more of the water evaporated it becomes No. 8, like this. It represents the crystal of sugar and molasses and everything together.

By Mr. MCCALEB:

Q. But the value of the product of your purchases of Louisiana refining first and second grocers' grades would exceed the sum stated in the rule?

A. Well, not—that question I cannot answer so definitely. I merely looked into the question generally of the business. During those years we have done a very large amount of refining of beet and Cuba sugar and I looked at it in the whole, and I state
44 our business of refining constitute- more than the amount stated in your rule.

By Mr. SEMMES:

Q. All classes?
A. Yes, sir; all classes.

By Mr. MCCALEB:

Q. If you exclude melado, or sugars that you received from abroad, what would the gross receipts be? Would they exceed the amounts stated in the rule?
A. That I don't know. I would have to examine the books. I have not looked into that question.
Q. I merely would like to have the approximate amount if you can give it.
A. I would be glad to give you the approximate amount, but I must look over it. This extends over a period of from five to six years and I will be very happy to do so, sir.
Q. Will you furnish it?
A. Oh, yes; I will do so.

By Mr. SEMMES:

Q. The gentleman desires to know if the clarified sugars that he named, the produce of the sales of that, would amount to $2,500,000, as stated in the rule; that is all you will have to state.
A. He wants to know whether the amount of Louisiana sugars, including all the grades of Louisiana sugars?

By Mr. MCCALEB:

Q. No; the next four grades.

By Mr. SEMMES:

Q. You want to know whether 2, 3, 4, 6, and 7?
A. Well, I will take a memorandum of that.
45 Q. Whether the annual sales of Nos. 1, 2, 3, 4, 6, and 7 amount to $2,500,000 per annum?
A. All right, I will look into that matter.
Q. If it is over the amount, you don't need to state it; if it is under, you will state it.
A. The amount is what?
Q. $2,500,000.
A. Is that collectively for the year or each year?
Q. Each year, from 1892, inclusive, to 1896, inclusive.

By Mr. MCCALEB:

Q. Now, Mr. Eastwick, will you also approximate the receipts of sales of loaf sugar—this block sugar?

A. I cannot give that data. It would have to come from the auditor of the company.

Q. Just get that for me.

A. Do you want to know the approximate amount of cube or lump sugar?

Q. The gross product of sales—gross receipts.

A. All right.

Q. And whether these sales would change the result when your receipts are more than $2,500,000; in other words, I would have to separate from the receipts of the fine sugars the receipts of this cube sugar; if it would not affect the result of $2,500,000 you need not give it.

By Mr. SEMMES:

Q. You want to know whether or not they have sold in each year $2,500,000 of block sugar—No. 19?

By Mr. MCCALEB:

Q. No, sir; I want him to substract from his gross receipts
46 of the refined sugars the receipts of the cube or block sugar.

By Mr. SEMMES:

Q. You want to substract the value of the block sugar from the sale of all the other sugars?

By Mr. MCCALEB:

Q. Yes; I state if it is over $2,500,000; and, if it is, you simply want a statement to that effect.

By Mr. SEMMES:

Q. After making this reduction if the residue is over $2,500,000 just state that fact.

Continued until the thirty-first for argument.

(Endorsed:) No. 54925. Civil district court. State of Louisiana *vs.* American Sugar Refining Company. Notes of evidence. Testimony for defendant. Produced, stamped, and filed May 23rd, 1898. Joe Garridel, d'y clerk.

Continued.

Extract from the Minutes of Division C.

MONDAY, *January* 10, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

By consent of counsel, the rule in this case fixed for this day was continued to Monday next, at eleven o'clock a. m.

47 *Continued.*

Extract from the Minutes of Division C.

MONDAY, *January* 17, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

The rule for State license came up for hearing on this day—present, Edwin H. McCaleb, Jr., Esq., for plaintiff; Thos. J. Semmes, Esq., for defendant—and after hearing pleadings and the evidence the case was continued to Monday, January 31st, 1898, for argument of counsel.

Continued.

Extract from the Minutes of Division C.

MONDAY, *January* 31, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause and by consent of counsel, the rule in this case fixed for this day was continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *February* 7, 1898.

Present: Honorable F. A. Monroe, judge.

48 Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause, the rule in this case fixed for this day was ordered continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *February* 14, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause, the rule in this case fixed for trial on this day was continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *February* 21, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause and by consent of counsel, the rule in this case fixed for trial on this day was ordered continued to Monday, February 28th, 1898, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

49 MONDAY, *February* 28, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

For cause, the rule in this case was continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *March* 7, 1898.

Present: Honorable Geo. H. Theard, judge, division E, acting in place of Honorable F. A. Monroe, judge, division C, now absent.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

Owing to the absence of his honor the judge of this division of the court, the rule fixed for hearing on this day was ordered continued to Monday next, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *March* 14, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

The rule in this case fixed for hearing on this day was
50 ordered continued to Monday, March 28th, 1898, at eleven o'clock a. m.

Continued.

Extract from the Minutes of Division C.

MONDAY, *May* 16, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

The rule in this case fixed for hearing on this day was, on proper showing, ordered to be continued to Monday, May 23rd, 1898, at eleven o'clock a. m., to be placed on the docket with the rank now held thereon.

Submission.

Extract from the Minutes of Division C.

MONDAY, *May* 23, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING Co. } No. 54925.

After hearing Thos. J. Semmes, Esq., att'y for defendant, this case was submitted for adjudication, three days being allowed to plaintiff to file his brief.

Judgment.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING Co. } No. 54925.

51 In this matter, submitted for adjudication for the reasons orally assigned on this day, the court, being of opinion that the business carried on by the defendant company is that of a manufacturer—

It is ordered, adjudged, and decreed that the rule of the plaintiff be discharged with costs.

Judgment rendered May 30th, 1898.

Judgment signed June 3rd, 1898.

(Signed) F. A. MONROE, *Judge.*

Judgment Signed.

Extract from the Minutes of Division C.

FRIDAY, *June* 3, 1898.

Present: Honorable F. A. Monroe, judge.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING Co. } No. 54925.

The judgment in this case, rendered on the 27th of May, 1898, was signed on this day.

Motion for Appeal.

Filed June 6, 1898, and entered on the minutes of same date.

Civil District Court, Division C.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 54925.

52 On motion of E. H. McCaleb, Jr., of counsel for plaintiff, and on suggesting that there is error to plaintiff's prejudice in the final judgment herein, rendered on May 30th, 1898, and signed on June 3rd, 1898, that the State of Louisiana is aggrieved thereby and desires to suspensively appeal therefrom:

It is ordered that a suspensive appeal be granted to the State of Louisiana from the final judgment herein, rendered on the 30th day of May, 1898, and signed on the 3rd day of June, 1898, returnable to the honorable supreme court of Louisiana on the 3rd Monday of June, 1898, without bond, the State of Louisiana being exempted from giving bond.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Jas. C. Peyton, d'y clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing fifty-one (51) pages do contain a true, correct, and complete transcript of all the proceedings had, documents filed, and evidence adduced upon the trial of the cause wherein State of Louisiana is plaintiff and American Sugar Refining Co. is defendant, instituted in this court and now in the records thereof under the No. 54925 of the docket of this honorable court, division "C," Honorable F. A. Monroe, judge.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this seventeenth day of June, in the year of our Lord
53 one thousand eight hundred and ninety-eight, and in the one hundred and twenty-second year of the Independence of the United States of America.

JAS. C. PEYTON, *D'y Clerk.*

54 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

Proceedings Had in the Supreme Court of the State of Louisiana.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

On appeal from the civil district court for the parish of Orleans, division "C."

Transcript of Appeal.

(Filed June 20th, 1898.) (Signed) Paul E. Mortimer, deputy clerk.

Cause Argued and Submitted.

(Extract from Minutes.)

NEW ORLEANS, TUESDAY, *December 6th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

This cause came on this day to be heard and was argued by counsel; Mr. E. Howard McCaleb, Jr., opened for the plaintiff and appellant; Mr. Thomas J. Semmes replied on behalf of the defendant and appellee, and Mr. McCaleb closed the argument. The court then took the cause under advisement upon the briefs now on file for both parties.

55 *Opinion of the Court.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *December 19th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

Appeal from the civil district court for the parish of Orleans.

This is a proceeding by rule on the part of the State tax collector of the second district of the city of New Orleans against the defendant for the sum of twenty-one thousand dollars as the aggregate amount of licenses due the State for the years 1892, 1893, 1894, 1895, 1896, and 1897, upon which interest and attorneys' fees are to be computed according to law.

It is alleged that the defendant is conducting the business of refining sugar and molasses, and has been conducting said business during the various years aforesaid, without having obtained any license therefor from the State, and that the annual gross receipts of said defendant company *is* in excess of two million five hundred thousand dollars.

It is further alleged that all persons who conduct any business without obtaining a license from the State before the first day of March are declared delinquents and become liable to interest and penalties, and that the defendant, having been a delinquent in each of the aforesaid years, is liable for said licenses, interest, and attorneys' fees.

56 To the rule taken the respondent excepted that the tax collector had no authority to thus proceed, it never having been placed on the list of delinquent license-payers which the law requires him to furnish.

Reserving the benefit of said exception, it makes the following answer, viz:

That the business of refining sugar and molasses is exempt from the payment of a license tax for the years specified, because its said business is and always has been that of refining sugar and molasses, and none other, and as such "it is and always has been one of those manufactories enumerated in article 207 of the constitution as entitled to exemption from license taxes," etc.

Its further answer is that act 150 of 1890, on the authority of which the license sought to be collected is demanded, violates the Constitution of the United States and is void in so far as it attempts to impose a license tax upon defendant company, because the said act denies to it the equal protection of the laws of the State, inasmuch as said act does not impose equally a license tax on all persons engaged in the business of refining sugar and molasses, but, on the contrary, discriminates in favor of the planters who refine their own sugar and molasses and in favor of planters who granulate syrups for other planters during the rolling season.

That for the foregoing reasons said act conflicts with and is violative of the provisions of the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving a person of his property without due process of law, and from denying any person within its jurisdiction *of* the equal protection of the laws.

On the trial of the exception same was overruled, and on the trial

of the rule same was discharged, and from that judgment plaintiff in rule prosecutes this appeal.

I.

The exception suggests that it is a condition precedent to proceeding by rule to collect delinquent licenses, as contemplated by act 150 of 1890, that the tax collector shall first enter the names of all delinquents upon the tax register, and shall also include the names of such delinquents in a list to be furnished to the
57 attorney of the tax collector.

In our opinion, that supposition is not supported by the terms of the statute cited.

Instead of the entry upon a license register being a condition precedent to a proceeding by rule, it clearly appears from section twenty of the act that the tax collector is required to keep a license register of every person, with the trade, profession, etc., pursued, the class and graduation of the same, the amount of the license applied for.

Instead of that provision having any relation to *delinquent* licenses it plainly specified the purpose of the legislature to have been to require tax collectors to prepare and keep a book in which they shall record the statements of all persons "*who may apply* for licenses to pursue any trade, profession, vocation, or selling, etc." Certainly it can have no application to those persons who, like defendant, made no application at all. Section twenty-two of the act has exclusive reference to collected and not delinquent licenses.

The exception was properly overruled.

II.

We will take the last proposition of the defendant first. The contention of counsel is that act 150 of 1890 exempts planters who refine their own sugar from the payment of a license and imposes a license upon persons who, like defendant, are exclusively engaged in refining sugars, thus depriving them of the equal protection of the laws, in violation of the fourteenth amendment of the Constitution of the United States.

On the other hand, the contention of the tax collector's attorney is that the sugar planter, who produces as well as refines his own sugar, belongs to a wholly different class from that to which the *refiner*, who *purchases manufactured sugar*, and thereafter refines it and sells it upon the market after same has been refined.

That the planter is the real manufacturer of sugar, and the refining process carried on by him is merely one of cleansing and purifying it and better fitting same for market, and only incidentally connected with his occupation of manufacturer; whilst, on the other hand, the business of the defendant is exclusively that of refining sugar—an independent business.

58 Consequently there can be no discrimination imputed to the statute in favor of one and against another of the *same* class.

That the act clearly specifies two distinct and different classes,

one of whom purchases, refines, and sells sugar, and the other of whom manufactures and refines his own product, the two classes of persons being dissimilarly situated.

The exemption clause of the statute is couched in the following terms, viz:

"*Provided* nothing herein shall be construed to apply to the business of grinding meal, ginning cotton, or making sugar by any farmer or planter."

Proviso to paragraph 1 of act 150 of 1890, under the heading of "manufacturers," same being the general license law.

The objection to the foregoing provision of the statute appears to be that it is special in its character, and such legislation was held by the Supreme Court not to come within the provisions of the fourteenth amendment.

They say: "The objection that the law of 1874 deprives the railroad companies of the equal protection of the laws is even less tenable than the one considered. It seems to rest upon the theory that legislation which is special in character is necessarily within the constitutional inhibition; but nothing can be further from the fact. The greater part of all legislation is special, either in the objects sought to be attained by it or in the extent of its application."

After analysing the statute, the court made the observation, viz:

"Such legislation is not obnoxious to the last clause of the fourteenth amendment *if all persons subject to it are treated alike under similar circumstances and conditions in respect to both of the privileges conferred and the liabilities imposed.*"

Missouri Railway Co. *vs.* Mackey, 127 U. S., 305.

The same rule of interpretation was announced in Santa Clara County *vs.* Railroad Company, 118 U. S., 394; Milling Company *vs.* Pennsylvania, 125 U. S., 187; Wurtes *vs.* Holland, 114 U. S., 606; Railroad Company *vs.* Richmond, 96 U. S., 321.

The statute in question exempts alike all planters and farmers who are engaged in "making sugar," and makes no mention
59 of those persons who are engaged in the business of refining sugar and molasses.

A very clear case is thus stated by the Supreme Court in Pacific Express Company *vs.* Seebert, 142 U. S., 339, in which Mr. Justice Lamar, speaking for the court, said:

"The legislation in question cannot be considered as invidiously discriminating against the express companies defined by it in favor of other companies or persons that may carry express matter on certain other conditions or under different circumstances. There is an essential difference between express companies defined by this act and railroad and steamboat companies or other companies that own their own means of transportation.

"The vital question is this: Railroad companies pay taxes on their road-beds, rolling stock, and other tangible property, etc.
* * *

"This distinction clearly places express companies defined by this act *in a separate class from companies owning their own means of*

transportation. They do not do business under the same conditions or under similar circumstances. In the nature of things and irrespective of the definitive legislation in question, they belong to different classes. There can be no objection, therefore, to the discrimination made as between express companies defined by this act and other companies or *persons incidentally doing a similar business by different means and methods* in the manner in which they are taxed."

In our conception, that decision is exactly applicable to this case and puts the constitutionality of the act in question beyond doubt.

We think the judge *a quo* correctly overruled the defendant's exception and maintained the constitutionality of the statute.

II-.

Is the defendant a manufacturer in the sense and within the meaning of article 207 of the constitution of 1879 and entitled to exemption?

The language of that article is, "that there shall also be exempt from taxation and license * * * the capital and machinery and other property employed in the manufacture of textile fabrics, leather, shoes, harness, saddlery, hats, flour, machinery, agricultural implements, and furniture and other articles of wood, marble, or stone, soap, stationary, ink and paper, boat-building and chocolate: *Provided*, not less than five hands are employed in any one factory."

By a constitutional amendment that article was so altered as to add thereto the following, viz., "the manufacture of ice, fertilizers, and chemicals." Act 22 of 1886.

In Shreveport Gas, Electric Light and Power Company *vs.* Assessor, 47th Ann., 65, we had this constitutional amendment under consideration, and in the course of our opinion we said:

"The words and terms of a constitutional article, like those of a law, are to be understood in their most usual signification, and in order to ascertain the true meaning of a statute the reason and spirit of it should be considered, and also the cause which superinduced its enactment.

"This is the accepted canon of construction of statutes, and equally so of the Constitution."

Accepting this as the proper view to be taken of the constitutional article and its amendment, the claim of the defendant to exemption from the payment of the licenses demanded is wholly groundless, for the very plain reason that the manufacturer of sugar and molasses—if indeed it be such—is not mentioned in either; and as it is the universal rule that questions of tax exemption must be strictly construed, judgment must go against the claim of the defendant.

There is, however, a doubt in our minds as to whether the law authorizes the State to recover on rule licenses for any year anterior to 1897.

We will therefore give judgment for the sum of thirty-five hundred dollars, with 2 % per month interest from the 1st of March,

1897, and 10 % attorneys' fees on said amount and interest, and enter a nonsuit as to the remainder of the plaintiff's claim.

It is therefore ordered and decreed that the judgment discharging the plaintiff's rule be avoided and reversed; and it is further ordered and decreed that the plaintiff do have and recover from the defendant the sum of thirty-five hundred dollars, with two *per cent.* interest per month thereon from the 1st day of March, 1897, ten *per cent.* attorneys' fees on said amount, and interest.

It is further ordered that a nonsuit be entered on the balance of the claim, and that all costs of both courts be taxed against the defendant and appellee.

61 *Final Judgment.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *December 19th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor the presiding justice pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

On appeal from the civil district court for the parish of Orleans.

It is ordered and decreed that the judgment discharging the plaintiff's rule be avoided and reversed; and it is further ordered and decreed that the plaintiffs do have and recover from the defendant the sum of thirty-five hundred dollars, with two per cent. interest thereon from the first day of March, 1897, ten per cent. attorneys' fees on said amount, and interest.

It is further ordered that a nonsuit be entered on the balance of the claim, and that all costs of both courts be taxed against the defendant and appellee.

Petition for Rehearing.

(Filed December 27th, 1898.)

THE STATE OF LOUISIANA
versus
THE AMERICAN SUGAR REFINING COMPANY. } No. 12877.

Petition for rehearing on behalf of The American Sugar Refining Company, appellee.

To the honorable the supreme court of Louisiana:

The petition of the defendant company, appellee, respectfully prays that a rehearing in this case be granted for the following reasons:

62 First. The court has inadvertently fallen into error as to the provisions in the constitution of 1879 under which the defendant claims exemption from the payment of license taxes.

The claim for exemption is not based on art. 207 of the constitution of 1879; it is founded on the provisions of art. 206, through clerical error designated as art. 306 in the answer, for the articles of the constitution of 1879 do not exceed 268 in number. The answer describes the provision which was relied on for the exemption claimed. It says the defendant is exempted from the payment of license tax because its said business is and always has been that of refining sugar and molasses and none other, and as such it is and always has been one of those manufacturers enumerated in art. 306 of the constitution as entitled to exemption from license taxes, and, furthermore, its business is and always has been conducted by means of mechanical appliances and apparatus, and it is further exempted by the said art. 306 from payment of license taxes as a person engaged in a mechanical pursuit.

Article 206 is the only article that exempts from license persons engaged in mechanical pursuits, so that it is clear art. 206 was the article relied on in the answer and intended to be pleaded. This article imposes a license tax on all persons and corporations "pursuing any trade, profession, business, or calling, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural, and mining pursuits, and *manufacturers* other than those of distilled alcoholic or malt liquors, tobacco and cigars, and cotton-seed oil. No political corporation shall impose a greater license tax than is imposed by the General Assembly for State purposes."

Under the provisions of this article any manufacturer is exempted from license tax unless he be a manufacturer of liquor, tobacco, cigars, and cotton-seed oil.

Hence the answer claimed the exemption granted to all manufacturers not included in the exceptions just mentioned.

On the other hand, art. 207 imposes taxes on all property, but declares that there shall be exempted from *taxation and license* for the period of ten years "the capital, machinery, and other
63 property employed in the manufacture of textile fabrics, leather, shoes, harness, saddlery, hats, flour, machinery, agricultural implements, and furniture, and other articles of wood, marble, or stone, soap, stationary, ink, and paper, boat-building, and chocolate, provided that not less than five hands are employed in one factory." It is true, as the court has decided, that the defendant is not entitled, under art. 207, to any exemption from *license or taxes*, because its business is not enumerated in the class of manufacturers exempted in that article.

But if the defendant corporation be a *manufacturer* of any description, it is entitled to the exemption from the license tax imposed by art. 206, whatever be the number of hands employed, unless it be engaged in the manufacture of liquor, cigars, tobacco, or cotton-seed oil, the manufactures of which are expressly excepted from the exemption conferred by that article.

Second. During the course of the argument one of the justices asked the counsel for the defendant whether he claimed exemption from taxes, and he replied, No; that the company always paid taxes on its property; and the two articles, 206 and 207, were read by counsel to the court to show the difference between the exemptions of art. 206 and those of art. 207. The court below decided the case in favor of the defendant on the exemption claimed by it as a manufacturer under article 206.

The whole oral argument in this court as to facts was confined to the testimony adduced to prove that the process of refining sugar was a process of manufacture. The counsel for the State, in his brief, as well as in the oral argument, addressed himself solely to the question whether or not the process of refining was a process of manufacture, and all the decisions of this court quoted in the briefs were confined to that question. No one suggested that the business of the defendant company belonged to the class of factories exempted by art. 207 from license and taxes.

It was also conceded on both sides that if a sugar refiner was a manufacturer the defendant was entitled to the exemption claimed under the constitution. This concession, of course, had reference to art. 206.

Third. Under these circumstances we submit that the most satisfactory course to pursue is that the court grant a rehearing and set the cause again for argument, as if it had never been considered, and that an oral argument be allowed on the rehearing. An oral argument is preferable because the case is reduced to one of fact—that is to say, whether the defendant company is a manufacturer of sugar or not, so that the oral argument can be confined by the court to the question of fact and thus save consumption of time.

64

This case is important when the amount involved is considered, because if decided against the defendant it will be compelled to pay the city license for the years claimed by the State in this suit, with penalties and the excessive interest of two per cent. per month, and, in addition thereto, the defendant becomes liable to pay the licenses, both State and city, for the year 1898, with similar penalties, to say nothing of the claim of the State to institute a new suit for the licenses of the years disallowed in this proceeding because of the form of action, including the penalties for a delinquency, which was unintentional, because the defendant supposed it was exempt.

THOMAS J. SEMMES,
Counsel for Petitioner, The American Sugar Refining Co.

(Signed) THOS. J. SEMMES, *Of Counsel.*

Rehearing Granted.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *January 9th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

BY THE COURT.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

It is ordered that the rehearing applied for in this case be granted.

Motion for Oral Argument on Rehearing.

Supreme Court of Louisiana.

THE STATE OF LOUISIANA
vs.
THE AMERICAN SUGAR REFINING COMPANY. } No. 12877.

Now comes the appellee, The American Sugar Refining Company, by its undersigned counsel, and moves the court that it be allowed an oral argument on the rehearing granted in this cause.

(Signed) THOS. J. SEMMES,
For Appellee.

(O K.
E. H. McC.)

(Endorsed:) Sup. court of La. No. 12877. State of La. *vs.* Amer. Sugar Ref. Co. Motion for oral argument on rehearing. (Signed) Thos. J. Semmes for appellee. Presented in open court Jan'y 24, 1899.

65 *Cause Submitted.*

(Extract from the Minutes.)

NEW ORLEANS, FRIDAY, *February 10th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

(On rehearing.)

This cause came on this day to be heard; whereupon the same was submitted to the court by counsel for both parties upon the briefs and papers now on file.

Opinion of the Court.

(On rehearing.)

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, TUESDAY, *March 7th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

"On rehearing."

Appeal from the civil district court for the parish of Orleans.

This is a proceeding by rule on the part of the State tax collector of the second district of the city of New Orleans against the
66 defendant for the sum of twenty-one thousand dollars as the aggregate amount of licenses due the State for the years 1892, 1893, 1894, 1895, 1896, and 1897, upon which interest and attorneys' fees are to be computed according to law.

It is alleged that the defendant is conducting the business of refining sugar and molasses, and has been conducting said business during the various years aforesaid, without having obtained any license therefor from the State, and that the annual gross receipts of said defendant company is in excess of two million five hundred thousand dollars.

It is further alleged that all persons who conduct any business without obtaining a license from the State before the first day of March are declared delinquents, and become liable to interest and penalties, and that the defendant, having been a delinquent in each of the aforesaid years, is liable for said licenses, interest, and attorneys' fees.

To the rule taken the respondent excepted that the tax collector had no authority to thus proceed, it never having been placed on the list of delinquent license-payers which the law requires him to furnish.

Reserving the benefit of said exception, it makes the following answer, viz:

That the business of refining sugar and molasses is exempt from the payment of a license tax for the years specified, because its said business is and always has been that of *refining* sugar and molasses

and none other, and as such "it is and always has been one of those *manufacturers* enumerated in article 206 of the constitution as entitled to exemption for license taxes, etc."

Its further answer is that act 150 of 1890, on the authority of which the license sought to be collected is demanded, violates the Constitution of the United States, and is void in so far as it attempts to impose a license tax upon defendant company, because the said act denies to it the equal protection of the laws of the State, inasmuch as said act does not impose a license tax equally on all persons engaged in the business of refining sugar and molasses, but, on the contrary, discriminates in favor of planters who refine
67 their own sugar and molasses, and in favor of planters who granulate syrups for other planters during the rolling season.

That for the foregoing reasons said act conflicts with and is violative of the provisions of the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving a person of his property without due proced*d* of law, and from denying any person within its jurisdiction *of* the equal protection of the laws.

On the trial of the exception same was overruled, and on the trial the rule was discharged, and from that judgment plaintiff in rule prosecutes this appeal.

I.

The exception suggests that it is a condition precedent to proceeding by rule to collect delinquent licenses, as contemplated by act 150 of 1890, that the tax collector shall first enter the names of all delinquents upon the tax register, and shall also include the names of such delinquents in a list to be furnished to the attorney of the tax collector.

In our opinion, that supposition is not supported by the terms of the statute cited.

Instead of the entry upon a license register being a condition precedent to a proceeding by rule, it clearly appears from section twenty of the act that the tax collector is required to keep a license register of every person, with the trade, profession, etc., pursued, the class and graduation of the same, the amount of the license applied for.

Instead of that provision having any relation to *delinquent* licenses, it plainly specified the purpose of the legislature to have been to require tax collectors to prepare and keep a book in which they shall record the statement of all persons "*who may apply* for licenses to pursue any trade, profession, vocation, or selling, etc." Certainly it can have no application to those persons who, like defendant, made no application at all. Section twenty-two of the act has exclusive reference to collected and not delinquent licenses.

The exception was properly overruled.

II.

We will take the last proposition of the defendant first. The contention of counsel is that act 150 of 1890 exempts planters
68 who refine their own sugar from the payment of a license and imposes a license upon persons who, like defendant, are exclusively engaged in refining sugars, thus depriving them of the equal protection of the laws, in violation of the fourteenth amendment of the Constitution of the United States. On the other hand, the contention of the tax collector's attorney is that the sugar planter who produces as well as refines his own sugar belongs to a wholly different class from that to which the *refiner* who *purchaser manufactured sugar* and thereafter refines it and sells it upon the market after same has been refined.

That the planter is the real manufacturer of sugar, and the refining process carried on by him is merely one of cleansing and purifying it and better fitting same for market, and not incidentally connected with his occupation of manufacturer, whilst, on the other hand, the business of the defendant is exclusively that of refining sugar—an independent business.

Consequently there can be no discrimination imputed to the statute in favor of one and against another of the *same* class.

That the act clearly specifies two distinct and different classes, one of whom purchases, refines, and sells sugar, and the other of whom manufactures and refines his own product, the two classes of persons being dissimilarly situated.

The exemption clause of the statute is couched in the following terms, viz:

"*Provided* nothing herein shall be construed to apply to the business of grinding meal, ginning cotton, or making sugar by any farmer or planter."

Proviso to paragraph 1 of act 150 of 1890, under the heading of "manufacturers," same being the general license law.

The objection to the foregoing provision of the statute appears to be that it is special in its character, and such legislation was held by the Supreme Court not to come within the provisions of the fourteenth amendment.

They say: "The objection that the law of 1874 deprives the railroad companies of the equal protection of the laws is even less tenable than the one considered. It seems to rest upon the theory that legislation which is special in character is necessarily
69 within the constitutional inhibition; but nothing can be further from the fact. The greater part of all legislation is special, either in the objects sought to be attained by it or in the extent of its application."

After analysing the statute the court made the observation, viz:

"Such legislation is not obnoxious to the last clause of the fourteenth amendment *if all persons subject to it are treated alike under similar circumstances and conditions in respect to both of the privileges conferred and the liabilities imposed.*"

Missouri Railway Co. *vs.* Mackey, 127 U. S., 305.

The same rule of interpretation was announced in Santa Clara County *vs.* Railroad Company, 118 U. S., 394; Milling Company *vs.* Pennsylvania, 125 U. S., 187; Wurtes *vs.* Holland, 114 U. S., 606; Railroad Company *vs.* Richmond, 96 U. S., 321.

The statute in question exempts alike all planters and farmers who are engaged in "making sugar," and makes no mention of those persons who are engaged in the business of refining sugar and molasses.

A very clear case is thus stated by the Supreme Court in Pacific Express Company *vs.* Seebert, 142 U. S., 339, in which Mr. Justice Lamar, speaking for the court, said:

"The legislation in question cannot be considered as invidiously discriminating against the express companies defined by it in favor of other companies or persons that may carry express matter on certain other conditions or under different circumstances. There is an essential difference between express companies defined by this act and railroad and steamboat companies or other companies that own their own means of transportation.

"The vital question is this: Railroad companies pay taxes on their road-beds, rolling stock, and other tangible property, etc. * * *

"This distinction clearly places express companies defined by this act *in a separate class from companies owning their own means of transportation.* They do not do business under the same conditions or under similar circumstances. In the nature of things and irrespective of the definitive legislation in question, they belong to different classes. There can be no objection therefore to the discrimination made as between express companies defined by
70 this act and other companies or *persons incidentally doing a similar business by different means and methods* in the manner in which they are taxed."

In our conception, that decision is exactly applicable to this case and puts the constitutionality of the act in question beyond doubt.

We think the judge *a quo* correctly overruled the defendant's exception and maintained the constitutionality of the statute.

III.

Having in our original opinion treated the defendant's exemption from the payment of a State license as having been asserted under the provisions of article two hundred and seven of the constitution of 1879, whereas the exemption was actually alleged and claimed under the provisions of article two hundred and six thereof, we granted a rehearing of this cause.

Recognizing this error to the defendant's prejudice, we now withdraw that portion of our opinion and will examine the claim of the defendant to exemption under article two hundred and six of the constitution.

That article is couched in the following words, viz:

"All persons, associations of persons and corporations pursuing any trade, profession, business, or calling, may be rendered liable to such tax, *except* clerks, laborers, clergymen, school teachers, those

engaged in mechanical, agricultural, horticultural, and mining pursuits, and *manufacturers*, other than those of distilled alcoholic or malt liquors, tobacco and cigars, and cotton-seed oil. No political corporation shall impose a greater license tax than is imposed by the General Assembly for State purposes."

Under the provisions of this article any manufacturer is exempted from license tax unless he be a manufacturer of liquor, tobacco, cigars, and cotton-seed oil.

Hence the answer claimed the exemption granted to all manufacturers not included in the exceptions just mentioned.

For the purpose of laying a foundation for its exemption, the defendant interrogated its superintendent as a witness, and from his testimony we have made the following extracts, viz:

"Q. Mr. McFetteridge, you are the superintendent of the American Sugar Refining Company of this city, are you not?

71 "A. Yes, sir.

"Q. What has been your experience in the refining of sugar?

"A. I have had experience running over fifteen years in the North and the past year in Louisiana.

"Q. Now, will you please commence from the beginning and go through the whole process by which crude sugars are converted into refined sugar, and do so deliberately, and in making the explanation exhibit the samples to the court, and the pictures of the machinery, and explain the operation.

"A. Well, necessarily, some of the samples and the photographs, to make a thorough explanation, will have to be shown together. Now, to begin with the process in the refinery, we receive the sugar either from plantations in the State or from abroad, wherever produced, in barrels or bags, packages—in whatever way it may be packed. Our first process is to melt every bag or barrel of sugar so received in suitable vessels specially constructed for the purposes of melting sugar and bringing it to a tendency for refining.

"There are suitable storage apparatus—storage apparatus and steam water storage—and they are connected with pumps run by power, with shafting, to pump the sugar after it is dissolved by these melters, and conducting it to the upper stories of this building for another operation.

"Q. Samples from No. 1 to No. 11 contain crude sugar and liquid before you have done anything with it?

"A. Yes; as we receive it. Sample No. 12 would show this crude sugar melted before clarification and filteration.

"Q. In the melter?

"A. Yes; after it has been brought to the density we require it.

"Q. Do you put all these sugars indiscriminately through the melter?

"A. It would not be my practice to put them in all indiscriminately. It results better to follow high with low grades, although they have to go through the same process.

* * * * * * *

"Q. I see a sample, No. 5, I should imagine. What is that?

"A. That is what is called the third grade of raw sugar.

72 "Q. Is this the most inferior grade of sugar that you receive?

"A. Yes; I judge by looking at it, it is. We have some fourths even poorer in quality that these thirds. After this sugar has been melted and pumped to the upper story of one of our buildings, we conduct an operation that we call clarification. This is done in blow-ups, and I have an exhibit of these raw sugar blow-ups which is No. 25 of our exhibits.

"Q. What is a blow-up and where is it on this vessel?

"A. Here, iron tanks containing steam."

"The WITNESS: After leaving these blow-ups the liquid is strained through these bags, the purpose being to remove the mechanicable impurities—the insolulable impurities that exist in the liquid form of the sugar.

* * * * * * *

"The process following this straining through the bags is the filtering process through bone-black filters, which are iron vessels in our establishment about twenty feet in height and ten feet in diameter.

* * * * * * *

"This speaks for itself. Now, I might speak of the process and show these samples in connection with this fluid. This liquid, after it leaves the bag filters, is strained through the filters containing this burnt animal bone-black itself, and also after the liquid leaves the bone-black. I have already shown the liquid after going in the bag filters. Sample No. 14 is a sample of this burnt animal bone-black. This is used as an agent for decoloring and removing impurities.

* * * * * * *

"No. 15 is an exhibit of this raw sugar after being melted, clarified in the blow-ups, strained through the filters, and decolorized by bone-black before boiling in vacuum pan.

"By the COURT: Do you bring all the grades of sugar, from the lowest to the highest, to that condition?

"A. Sir?

"Q. Some of the other grades you have to filter more than once?

"A. Yes, to bring it to this color. The next photograph we have deals with the machinery that is used for rerevivifying the

73 bone-black that has been used for the purpose of filteration.

* * * * * * *

"Q. Please state what you mean by revivifying.

"A. This bone-black, after being used for some length of time, more or less dependent upon the condition of the sugar that is run through it, becomes exhausted and unfit for further use; consequently it is necessary, by the application of a greater or lesser quantity or hot water to be run through these bone-black filters, to thoroughly wash

this bone-black, and after this is done the bone-black is brought back to a condition fit for use again, while the reburning of the bone-black in what are called bone-black kilns.

* * * * * * *

"By Mr. SEMMES: Under great heat?

"A. Yes, sir.

"Q. What degree?

"A. Between seven and eight hundred.

"Q. Fahrenheit?

"A. Yes, sir.

"By the COURT: What is bone-black—animal bones reduced to a black powder by being burned or charred?

"A. Yes, sir; decidedly.

"By Mr. SEMMES:

"Q. Made of bone?

"A. Yes, sir; made of animal bones. I have omitted one important photograph in connection with the bag filters that I wish to show. That is photograph No. 27, showing the scum press, in which the impurities that are collecting in the bag filters are collected in this scum press and burned out of the house, and the object of the scum press is to recover whatever existing liquid may be in those impurities. Of course, taking the bag out of the bag filters mixes with sand. A certain amount of liquid is in there, and we desire to recover the liquid, leaving the raw cake.

"By the COURT:

"Q. How do you get all of that stuff out of the bags?

"A. By washing the bag in a tub and pumping the residue
74 of this stuff out, and it leaves the dry scum.

"By Mr. SEMMES:

"Q. Have you a sample of the scum?

"A. Yes, sir. Sample No. 13 is a sample of this scum and mud that is taken from the sugar in this raw state and finally thrown out as worthless—containing no more sugar—and as valueless.

"Q. That comes out of the scum press?

"A. Yes, sir. We exhibit this to show the amount of impurity and dirt that we recover in this way and that is taken from the sugar. I may say that frequently we take as many—depending, of course, on the amount of work we are doing—as seventy and eighty barrels of this dirt and scum daily, containing four hundred pounds to the barrel.

"By the COURT:

"Q. What is done with that?

"A. Carried away into waste. It has no value that we know of.

"By Mr. SEMMES:

"Q. Wouldn't it be good as manure?

"A. It might be, but we pay for removing it. We got no return

for it. Photograph No. 30 is the vacuum pan. It is an exhibit of the first *page* of manufacture after this liquid has left the bone-black filters. It is the vacuum pans of the refinery for the crystallizing of this filtered liquid into grains.

"Q. What happens to the vacuum pans?

"A. This filtered liquid is made into grains. The vacuum pan has a vessel, shown here, containing a series of coils, and the steam is turned on the pans.

"Q. Boiled in a vacuum?

"A. Yes, sir; at a low temperature. That is one of the operations of the refinery in which a good deal of skill is required, in filling this grain with liquid from time to time and until finally the pan is finished.

"Q. What do you call it—'finishing pan'?

"A. Yes, sir. We term it a strike.

"By the COURT:

"Q. Does the grain form in the pan?

75 "A. Yes, sir.

"Q. In the pan?

"A. Yes, sir; in the pan itself. I will show you. Photograph No. 30 shows the vacuum pan itself. This is a sample, No. 16, in our exhibits of the magma.

"Q. That is what you term this sugar at that stage in the process of refining?

"A. Yes, sir; after boiling in the vacuum pan. It is in that condition when it is dropped in the vacuum pan for the next stage of manufacture.

"Q. Before going into the centifugals?

"A. Yes, sir; that, as I said before, requires a great deal of skill in the handling.

"Q. That is what might be called a wet refined sugar?

"A. Yes, sir.

"Q. The next process is to dry it?

"A. Yes, sir; but the grain is already perfectly formed here in the vacuum pan. The next exhibit and the next stage of manufacture is shown by our photographs marked No. 31, showing the centrifugal machines, shafting, pulleys, beltings, etc.

"Q. What is the function of the centrifugal?

"A. The function is to remove this magma after it leaves the pan and separate the grain and moisture, leaving the dry sugar.

"Q. The syrup goes out in one direction and the sugar dries remains in the machine?

"A. Yes, sir. Here is an exhibit of the sugar from the machine, showing the contrast between the sugar leaving the vacuum pans and the sugar after being machined in the centrifugal. Our first photograph is marked No. 32, and it is a view of our cube or block sugar machines showing the machine by which the sugar is pressed into these cubes, as shown in sample marked No. 19. The sugar from the centrifugal machines comes into this cube machine, and by a system of pressing is pressed into these cubes. The sugar is

pressed in these by an application of hot air for a certain
76 number of hours and is perfectly dry, as shown by the form shown. Exhibit No. 33 is a photograph of the granulation machine, and sample marked 21 is an exhibit of sugar after being thus granulated in these granulating machines. The machine is simply a cylinder drum. This extends six feet in diameter and twenty-five feet long, and by the force of hot air being forced through at a great rapidity through these drums and the drum being kept in motion the sugar is thoroughly dried of any moisture remaining in it after leaving the centrifugal machine and becomes a finished product, with an attractive appearance, such as shown in this sample No. 21, which is a sample of finished granulated sugar.

"Q. It is merely a drying machine?

"A. This is the drying machine. We have to conduct an operation for making crystals in the vacuum pans.

"Q. The main function of that apparatus is to finish the drying process?

"A. Yes, sir; and make the grains more sparkling—more handsome in appearance for table sugar.

"Q. It is what you might call a polishing machine, is it?

"A. Yes, sir; sparkles.

* * * * * * *

"By the COURT: The next exhibit is photograph marked 34, showing our powder mills for making a special grade of sugar known to the trade as powdered sugar, which is considered the finest grades of crystal-iz- sugar, used by confectioners for crystallizing fruits, etc. This is a sample of the pulverizing press. It goes through 13 discs, revolving at a great rapidity, shown in this photograph No. 34, completely pulverizing the grain and leaving the product as shown in the sample marked No. 20, powdered sugar.

* * * * * * *

"By Mr. SEMMES:

"Q. Is that after granulation?

"A. Yes, sir; after leaving the granulation it is completed into powder, and there is absolutely no moisture left in the sugar, and both of these grades of sugars, granulated and pow-ered,
77 undergo all these operations as I described it. I have forgotten again to show one sample taken without a photograph. It is sample No. 18, which exhibits a sample of the syrup coming from the centrifugal machines. While drying the sugar in these machines this fluid is drawn from perfections or sieves in the machines and runs into tanks, where it is again pumped to the pans and taken in for boiling again through a number of skillful stages.

"By Mr. SEMMES:

"Q. That No. 18 is the moist sugar that comes from the centrifugal?

"A. It has water and syrup between the grains of sugar as it

comes through the vacuum pans, and is thrown out as it goes through the sieves of the centrifugal. Sample No. 22 is a grade of sugar manufactured by us, known as confectioners' "A," in which the operation of granulating is omitted and the grain is formed in the vacuum pans to the size desired by the trade, after the operation of machining in the centrifugal is, of course, conducted, but after leaving that it is packed in barrels for shipment, and afterwards retained some little moisture.

* * * * * * *

"By Mr. SEMMES:

"Q. How do the confectioners use that sugar?

"A. They use it in their confections; I am not familiar with that.

"Q. For what reason is that sugar manufactured?

"A. It is to satisfy the trade. Eventually, they get better results out of this sugar.

* * * * * * *

"No. 36 and No. 37 is a photograph of the apparatus called the Lily evaporator, its object being to bring to a greater degree of density the liquid resulting in sweet water and such as comes from the washing of the tubs and bone-black apparatus, by which the liquid is drawn from the tubes and through which steam is passed and thickened up to the required density.

"Q. This is the residue after refining?

"A. Yes, sir; molasses, which is also a product of a refinery. I think I have exhibited all the manufactured samples in de-
78 tail and the raw material from which we manufacture, which are all here as exhibits.

"By the COURT:

"Q. During what process in the stage of refining do you get this molasses?

"A. This molasses that we produce?

"Q. Yes.

"A. No. 33 is a sample. Here it is. We get it at the full final stage of the process. It is simply a substance containing sugar, but mixed with it are impurities that have been taken out at other stages of refining to such an extent as would prevent this from being turned out as granulated sugar.

"Q. Where does that come from—the final stage?

"A. In the process of crystallizing. Finally—throwing off syrups from time to time—we finally got to the stage where we cannot boil it into grain, as it would not be profitable for the refinery to attempt to extract the sugar in this molasses; it would not justify us to go to the expense of obtaining the sugar remaining in it from it. I think I have described the process."

Analysing this testimony, we find that the process of refining sugar by the defendant company is conducted in the following manner, substantially, viz:

The sugar is received from the plantations where it is first man-

ufactured, or from abroad in barrels, bags, or packages in which it has been packed, and the first process after it has been received is to put it in vessels specially constructed for the purpose, and melt it and bring it to a tendency for refining.

This is done through the instrumentality of large vessels called "melters."

The next process is that of "clarification," which is done by means of what are technically styled "blow-ups," large wide tanks containing steam, and the liquid is strained through bags after leaving the blow-ups for the purpose of removing any insoluble impurities which exist therein.

Then follows the "filtering" process through large bone-
79 black filters—that is, filters containing "burnt animal bone-black," and it is used for the purpose of "decoloring and removing impurities" from the liquid.

The testimony of the superintendent explains the effect of the foregoing processes upon the raw or unrefined sugar to be as follows, viz:

"We exhibit this to *to* show the amount of the impurity and dirt that we recover in this way, and that is taken from the sugar. I may say that we frequently take as many—depending, of course, on the amount of work we are doing—as seventy or eighty barrels of this dirt and scum daily, containing four hundred pounds to the barrel."

The next is the "granulating" process, which is conducted by depositing into vacuum pans, wherein the liquid is crystal-ized into grains, which is accomplished by means of a series of coils of pipe through which the steam is conveyed into the vacuum pan at a low temperature.

Of this process, the testimony of the superintendent speaks as follows, viz:

"That is one of the operations of this refinery in which a good deal of skill is required, in filling this grain with liquid from time to time and until finally the pan is finished."

This is called the "finishing pan," and the drying process is technically termed a "strike," and that is because the liquid becomes granulated by this process, the grains forming in the pan. In that condition it is called "wet refined sugar."

The next process is drying the sugar thus granulated by passing it through the centrifugal machines, which is described by the superintendent thus:

"The function (of the centrifugal) is to remove the *magma* after it leaves the pan and separate the grain and moisture, leaving the dry sugar."

The sugar passes from the centrifugal machines into what is termed a cube machine, the sugar being pressed into cubes by the application of heated air, and is made perfectly dry.

The superintendent thus describes the process, viz:

"The machine is simply a cylinder drum. This extends six feet in diameter and twenty-five feet in length; and by the force
80 of hot air being passed with great rapidity through these drums, and the drums being kept in motion, the "sugar is

thoroughly dried of any moisture remaining in it after leaving the centrifugal machine, and becomes a finished product, with an attractive appearance, such as is shown in the sample No. 21, which is a sample of the finished granulated sugar."

The witness then describes the process of making "a grade of sugar known to the trade as powdered sugar," which is considered to be one of the finest grades of sugar, and chiefly used by confectioners for crystal-i-ng fruits, &c.; but this needs no special attention, as it plays no part in this controversy, and the same may be said of the syrup which comes from the centrifugal machines during the process of granulating sugar.

The latter process is described by the witness in this way, viz: "The moist sugar that comes from the centrifugals has water and syrup between the grains, as it comes through the vacuum pans, and is thrown out as it goes through the seives of the centrifugals."

Again, the superintendent says that "the syrup is the final process of crystal-ization, in which it is thrown off from time to time; that we finally get to the stage where we cannot boil it into grain, as it would not be profitable for the refinery to attempt to extract the sugar in this molasses," &c.

On this state of facts, is the defendant a *manufacturer* in the sense and within the meaning of article two hundred and six of the constitution of 1879?

Before expressing an opinion on that question we will examine the adjudications of this court in which it has placed an interpretation upon that article and defined the term *manufacturer* as applied to different industries and pursuits which were under investigation therein, so that we may the better draw the analogy between them.

In City *vs.* Le Blanc, 34th Ann., 597, this court said: "A manufacturer is not one who creates out of nothing, for that would surpass human power; neither is he one who produces a new article out of materials entirely raw.

"He is one who gives new shapes, new qualities, new combinations to matter which has already gone through some artificial process.

81 "A shoemaker is none the less a manufacturer because he does not tan the leather; the tanner is none the less a manufacturer of leather because he does not breed and raise the bullocks from which the raw hides are taken. The tanner makes leather to sell, but he does not buy the hides to sell again.

"He produces the article of leather and depends upon the labor which he bestows upon the raw material." The court sustained the defendant's exemption from the payment of a license on the ground that his occupation was that of a cooper and made barrels and hogsheads from rough logs and splits, &c.

In City *vs.* Ernest & Co., 35th Ann., 746, the court sustained the defendant's exemption as a rice miller, and in so doing employed this language, viz:

"A manufacturer is defined to be one who is engaged in the business of working raw materials into wares suitable for use—who gives

new shapes, new qualities, new combinations to matter which has already gone through some artificial process.

"A manufacturer prepares the original substance for use in different forms. He makes to sell, and depending for his profit on the labor which he bestows on the raw material.

"Rice is an agricultural product extensively raised in this State. The milling of it is effected by different processes, during which it passes from its original roughness to conditions in which it is fit for different uses.

"Deprived of its outer shell and of the silica enveloping the denuded grain, it becomes an object of marketable value. It is only after several manipulations that various substances or products are obtained, which are: the hull, the bran, the flour, the red grain, and, finally, the cleaned and polished kernel, all of which become separate and distinct articles of commerce.

"It is not easy to distinguish between the several processes to which rice is subjected by the manufacturer, who, from beginning to end, works it up into various forms for use. It may be said to undergo one and the same process throughout. Even if a distinction could be realized, the working of the raw material is accomplished continuously. The person who puts it through the process
82 gives to it gradually new shapes, new qualities, new combinations, and thus is a manufacturer within the intent and scope, the spirit and letter, of the constitutional immunity."

In State *vs.* Dupre & Hearsey, 42 Ann., 561, the court maintained the defendants' exemption from the payment of a license, pursuing the business of editing, printing, and publishing a daily newspaper, and the court, after making the foregoing quotation from State *vs.* Le Blanc, used this language, viz:

"Keeping this definition in view, the statement of facts embodied in this record shows that defendants use in their business valuable machinery and implements; that, in addition to the clerical and editorial departments, they employ a large number of mechanical laborers, such as type-setters, engineers, pressmen, and their assistants; that they purchase and use great quantities of raw materials, such as paper, ink, glue, *etc.*; that by means of this machinery and mechanical labor they convert this raw material into a new and distinct article for use, and in commercial demand called a newspaper, which they sell directly to dealers and consumers."

But this court placed its decision principally upon the grounds (1) that the provisions of the license law of that year did not in terms embrace the defendants' business; (2) that the publishing of books and the manufacture of stationery being expressly exempt under article two hundred and seven, by fair analogy like exemption should be extended to a newspaper, under article two hundred and six of the constitution.

Hence that decision is somewhat *sui generis* and exceptional and cannot be accepted as generally applicable as a precedent.

In State *vs.* Biscuit Manufacturing Company, 47th Ann., 160, this court maintained the exemption of the defendant as a manufacturer of crackers, biscuit, and Italian paste, the proof disclosing that the

"process of manufacture is that the flour leaves the barrels and passes through a powder-sifter, thence into a powder-mixer, from this into a dough-box on tracks, and is worked into two different kinds of dough; goes into a cutting machine, and finally into the oven, from which the complete articles are taken, boxed, and shipped. The material is handled exclusively by machinery."

83 Upon this statement the court say: "It will be perceived that the establishment is a manufactory in which raw materials are made into wares suitable for use. There are new shapes, new combinations, new qualities, given to the raw material by the process of manufacturing the articles from the original material."

After citing other cases and distinguishing them therefrom, the court concluded its opinion as follows, viz:

"In the instant case the identity of the original material is lost in the new articles created—in the change of shape. New qualities and new combinations which enter into their composition *when* render them suitable for use in an entirely different manner from the manner in which the original material could be used."

In Fertilizing Company *vs.* Assessors, 48th Ann., 1476, we held that a process resulting in vaporizing the moisture in offal and animal matter, disposing of the grease, separating the grease or oils of such refuse and matter, and converting the *residuum* into a fertilizer is the manufacture of such fertilizers within the scope of the constitution.

The foregoing are the cases in this court on which the defendant relies for the maintenance of its exemption.

In State *vs.* Hemard, 23rd Ann., 263, the defendant claimed exemption from the payment of a license as the proprietor of a cotton-press because he employed the cotton pickery exclusively for his own use, and that, as a commission merchant, he was accustomed to purchase wet, damaged, and muddy cotton and clean and prepare same for market in his cotton pickery and sell it for his own account.

The district court rejected his claim, and this court affirmed the judgment.

In State *vs.* Mannessier, 32nd Ann., 1075, the defendant appealed from a judgment condemning him to pay a license as a peddler of ice cream and made claim to exemption on the ground that he made sales exclusively of articles of his own manufacture, and this court denied the exemption.

In State *vs.* Eckendorf, 46th Ann., 131, we held that a baker who makes and sells his own bread exclusively is not entitled to exemption from the payment of a license as a manufacturer of bread, the proof disclosing "that bread is made from flour, the

84 dough being prepared with yeast and salt, and required an experienced hand to bake it properly."

In Patterson *vs.* City, 47th Ann., 276, we find some very pertinent and controlling expressions of this court with regard to the import and meaning of the term *manufacture* as it is employed in the constitution, notwithstanding our opinion dealt with the exemption in article two hundred and seven.

We said:

"The constitution uses the word manufacture in its ordinary sense. Its natural import is to produce an article, and its common application refers to changing the raw material into some new and useful form."

And in speaking of the exemptions which are contained in article two hundred and seven, our opinion says: "In all these exemptions the constitution contemplates manufactories that *produce an article, not a* a *mere addition or mode of use of an article already manufactured.*"

In City *vs.* Coffee Company, 46th Ann., 86, the defendant claimed exemption as a manufacturer of coffee, and same was sustained by the lower court; but this court reversed its judgment, and in the *court* of their opinion said:

"The defendant corporation contends that by means of a secret non-patented process it is enabled to make a selection of green coffee having the qualities required for the purpose intended, which coffee, after being subjected to manipulation, being roasted and allowed to cool in a particular manner, produce- certain brands of coffee, each having a recognizable taste and flavor.

"The defendant corporation says and insists that no chemicals of any kind are used during the secret process, and it is upon the production of its different brands of roasted coffee that it relies to be held to be 'a manufacturer of coffee.'"

The court then observed that "we are satisfied that the defendant corporation does not claim that it is a manufacturer by reason of grinding coffee and thereby changing its form;" but that, on the contrary, "its claim to be a manufacturer of coffee is based wholly on the production of brands of unground roasted coffee."

The opinion then cites with approval the following extract
85 from Hartrauft *vs.* Wiegmann, 121 U. S., 609, viz:

"We are of opinion that the shells in question here were not manufactured and (complainants) were not manufacturers of shells. * * * They were still shells. They had not been manufactured into a new and different article, having a distinctive name, character, or use from that of a shell. The application of labor to an article, either by *brand* or by mechanism, does not make the article necessarily a manufactured article within the meaning of that term as used in the tariff laws. Washing and scouring wool does not make the result a manufacture of wool. Cleansing and ginning cotton does not make the result a manufacture of cotton."

The court, in the principal case, then said:

"It is not every employment of labor which will make the thing upon which it is employed a manufacture. It has been held that the great and laborious pursuits of mining and ship-building are not manufacturing occupations."

And upon the foregoing five cases counsel for the plaintiff relies as well as upon those cited by the defendant's counsel.

This *résumé* embraces extracts from all the pertinent decisions of this court with regard to the terms *manufacturer* and *manufacture* as they are employed in the exemption articles of the Constitution,

and we propose to add thereto a few extracts from the decisions of the courts of other jurisdictions, so as to make a complete *consensus* of judicial opinion on the question at issue.

The following cases are cited by the defendant's counsel in their brief, viz:

"In the case of the United States *vs.* Semmer, 41 Fed. Rep., 327, the court, after stating that when certain materials found in nature are placed in a melting pot the substance produced is crude glass, proceeds thus: 'It is a manufacture. The component materials are transformed into a new substance. Now, that same glass may be, by the application of labor, transformed from the molten state, by a process of blowing and cutting, into an article which is known as cylinder or window-glass, which is a manufacture of glass, because it is of a distinctive character and has a distinctive name and a distinctive use from the crude glass out of which it is made;
86 and so, by a different process of manufacture, this same crude glass, when poured upon a table and pressed with a roller, become- what is known in trade and commerce as rough or rolled cast plate-glass. That also is a manufacture of glass. That also has a use, character, or name distinct from the use, character, or name of the crude glass in the crucible out of which it is made. By various processes and by the application of a great deal of labor this rough or rolled plate-glass is eventually transformed into polished plate-glass. It needs no witness to tell us that polished plate is a manufacture of glass within the definition of the supreme court, and therefore a manufacture of glass.'"

Similar views are expressed by the Supreme Court of the United States in the recent case of Tide Water Oil Company *vs.* United States, 171 U. S. Rep., 216.

In that case the court said:

"The primary meaning of the word 'manufacture' is something made by hand as distinguished from a natural growth; but as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily, the article so manufactured takes a different form, or at least subserves a different purpose, from the original materials, and usually it is given a different name. Raw materials may be and often are subject to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. Thus, logs are first manufactured to boards, planks, joists, scantlings, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, windows, sashes, trimmings, and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture and for which the article so manufactured receives a different name."

The following are the cases cited by the plaintiff's counsel in their brief, viz:

This, in Rex *vs.* Tregoming, 2 Young & Jervis Reports, 132, "where a printer of calicoes was held not to be a manufacturer, it was said: 'It is contended that, for the purpose of this act,
87 the printer is the maker and manufacturer of these goods, likening this, as I conceive, to the familiar case of the maker of a picture, who is, of course, he who spreads the colors upon the canvas which produce the impression upon the mind, and not the man upon whose canvas the picture is printed. There is, however, no resemblance whatever between the two cases. The maker and manufacturer of these goods, according to the plain sense and common understanding of these words, is he who manufactures the articles upon which the print is impressed. He who puts the stamp upon the goods is not the maker or manufacturer within the common meaning of these words, upon the plain construction of which I have no doubt."

Again:

"In Frazee *vs.* Maffitt, 20 Blatchf. (U. S.), 267, it was held that a process of baling hay was not a manufacturing, and the court said, among other things: 'Dried apples would not be called a manufactured article, though the apple is peeled and cored and sliced, and dried by exposure to the sun and *manipulation;* the substance of dried apples is still apples. *Change of name and manipulation* does not necessarily constitute manufacture under the meaning of section 2516.'

"Thus, it was held in Commonwealth *vs.* Glitinam, 64 Pa. St., 100: 'The rectifying process is not a manufacturing process. Webster says it means correcting, amending, refining by distillation, sublimation, adjusting. Rectifying distilled spirits made in another State does not constitute it spirituous liquors manufactured within this Commonwealth. The spirits were not manufactured here; they were only corrected or refined in this Commonwealth.'"

In United States *vs.* Tenbrook, Pet. (C. C.), 180: "The use of a still for rectifying spirits *already distilled* is not the distilling of spirits within the meaning of an internal-revenue act, nor in the common understanding of mankind."

And affirming the case on appeal, United States *vs.* Tenbrook, 2 Wheat, 247:

"The rectification or purification of spirits after their distillation has been complete, in order to fit them for certain purposes of combination with other materials, is no part of the process of distillation. The distillation of spirits and the rectification of them
88 after they are distilled appear to be separate and distinct acts."

Considering these various expressions of opinion with regard to the term *manufacturer*, what is the proper conclusion to arrive at in respect to the defendant's employment?

This court said that a cooper who makes barrels and hogsheads from rough logs and splits of wood is a manufacturer, because he gave new shapes, new qualities, and new combinations to matter which had already gone through some artificial process. It held that a rice miller is a manufacturer because he works raw material

into wares suitable for use and makes from the denuded grain, after several manipulations, various commercial products and substances, such as bran, flour, red grain, and the polished kernel.

It held a corporation which made crackers, biscuit, and Italian paste from flour to be a manufacturer, because the raw materials were made into wares suitable for use, new qualities being given to the raw materials by various manufacturing processes whereby the identity of the raw material was lost.

That the process by which the moisture in offal and animal matter is vaporized and the grease and oil separated therefrom, and the *residuum* converted into fertilizers, is a manufacturing process.

But it has held that one who purchases wet, muddy, and damaged cotton and cleans and prepares same for sale is not a manufacturer, because cleaning and ginning cotton do not make the result the manufacture of cotton.

That one who makes ice cream from sugar, ice, milk, and other ingredients is not a manufacturer.

That one who makes bread from flour, salt, and other ingredients is not a manufacturer.

That the natural import of the term manufacture is to produce an article by changing the raw material into some new and useful form, and that to produce an article is not a mere addition or mode of use of an article already manufactured.

That a corporation which by a secret non-patented process is enabled to make a selection of green coffee possessing the requisite qualities for an intended purpose, after having been subjected
89 to certain manipulations, is not a manufacturer.

That one who by the application of labor and mechanical skill makes certain kinds of shells more polished and attractive in appearance is not a manufacturer, because he did not manufacture them into new and different articles having a distinctive name, character, or use from that of shells, for they remained shells still.

That the washing and scouring of wool does not make the result a manufacture of wool.

That mining and ship-building are not manufacturing occupations.

That the printer of calicoes is not a manufacturer, because he does not make the goods, only prints the colors upon them and improves their salable value, unlike the painter who with his brush spreads colors upon a canvass and thereby *creates* a work of art which produces a pleasing impression upon the mind and captivates the fancy of the beholder.

The result of the evidence as applied to the authorities, in our opinion, is that the process of refining sugar and molasses, as it is explained by the defendant's superintendent, is not a manufacturing process, and that defendant is not a manufacturer in the general and common acceptation of that term.

At its incipiency, the defendant purchases on the market or from planters a supply of *sugar* in a completely manufactured state, and, by skillful manipulations, through the instrumentality of vast, elaborate, and complicated machinery, and by an application

thereto of steam-power and great air-pressure, same is first melted, then cleansed of its impurities, then bleached and improved in color, then dried, granulated, and brought into *sugar* again—in exactly the same state it was when these manipulations were commenced, though greatly improved in purity and beauty of appearance and rendered more merchantable.

By this process *sugar* is refined in grade, improved in quality, and bettered for commercial use, but it remains *sugar* still, like the cotton and the shells.

It is given no new name, use, shape, or combination.

It is the self-same, identical raw material, just as when
90 first manufactured from the cane and marketed by the planter.

Tax exemptions are strictly construed, and cannot be sustained except upon clear proof. Doubt is fatal to the claim.

IV.

In our former opinion we said: "There is, however, a doubt in our minds as to whether the law authorizes the State to recover on rule licenses for any year anterior to 1897," and consequently gave judgment only for the sum of $3,500.00 as the amount of the license due by the defendant for the year 1897, with two *per cent.* per month interest from the 1st of March, 1897, and ten *per cent.* attorneys' fees.

When, however, we granted a rehearing, that opinion was set aside and the whole controversy set at large again, and on the resubmission of the case the counsel of both parties gave this question their attention in their briefs.

We make the following quotation from the application of the defendant's counsel for a rehearing, viz:

"Third. Under these circumstances we submit that the most satisfactory course to pursue is, that the court grant a rehearing and set the cause again for argument as if it had never been considered, and that an oral argument be allowed on the rehearing. An oral argument is preferable because the case is reduced to one of fact—that is to say, whether the defendant company is a manufacturer of sugar or not; so that the oral argument can be confined by the court to the question of fact, and thus save consumption of time.

"This case is important when the amount involved is considered, because if decided against the defendant *it will be compelled to pay the city license for the years claimed by the State in this suit, with penalties, and the excessive interest of two per cent. per month*, and in addition thereto the defendant becomes liable to pay the licenses, both State and city, for the year 1898, with similar penalties, to say nothing of the claim of the State to institute a new suit for the licenses of the years disallowed in this proceeding because of the form of action, including the penalties for a delinquency, which was unintentional, because the defendant supposed it was exempt." (Our italics.)

91 Counsel for the State cites the provisions of the license law of 1890, as follows, viz: "That if any business shall be conducted without a license * * * the officer whose duty it is to issue licenses shall, through the attorney herein provided for, on motion in the proper courts * * * take a rule on the party or parties doing such business, to show cause * * * why said party or parties should not pay the amount of the license claimed and penalties, or be ordered to cease from further pursuit of said business until after having obtained a license," &c.

Section 18 of act 150 of 1890.

Counsel cites the case of McGuire, tax collector, *vs.* Vogh, 36th Ann., 812, in which this court placed the following interpretation on a similar statute of 1880, viz:

"A license could not be collected by sale of an occupation, and it is upon an occupation that the license is imposed. For that reason, doubtless, a *rule* is authorized to be taken on motion against the party who has not obtained his license to show cause why he shall not stop his business (Acts of 1880, p. 152); and we see no reason why the rule should not also embrace the collection of the license, although it is not prescribed as the mode of collecting licenses, &c."

But the legislature of 1886, doubtless recognizing the propriety of the court's suggestion in the Vogh case, amended the license law in that respect so as to conform thereto—sec. 17, act 101 of 1886—and section 18 of act 150 of 1890 is an exact reproduction thereof.

In State *ex rel.* Pacquet *vs.* Judge, 49th Ann., 764, this court construed and enforced the statute in question. Section 18 of act 150 of 1890.

In State *vs.* Insurance Co., 43 Ann., 138, this court enforced the provisions of act 101 of 1886.

In City *vs.* Insurance Co., 41 Ann., 1142, the plaintiff proceeded by rule under the act of 1886 to enforce the payment by the defendant of licenses for the *two years* 1887 and 1888, and this court sustained the proceeding and amended the judgment appealed from so as to give judgment for the two *per cent.* per month interest allowed by that act, same being similar in that respect to the statute of 1890.

92 The foregoing decisions and the statutes they refer to have resolved the doubt we entertained with regard to proceeding by rule for the recovery of the delinquent licenses in favor of the State for the years prior to 1897, and for that reason we are of the opinion that the State is entitled to recover judgment against the defendant and appellee for the amount of the annual license for each of the years in which the petition charges its delinquency—that is to say, for the sum of $3,500.00 for each of the years 1892, 1893, 1894, 1895, 1896, and 1897, with interest and attorneys' fees and cost.

It is therefore ordered and decreed that our former judgment and decree be annulled and set aside, and it is further ordered and decreed that the judgment appealed from be likewise annulled and reversed, and proceeding to render such judgment as should have

been rendered by the judge *a quo*, it is adjudged and decreed that the State of Louisiana do have and recover of and from The American Sugar Refining Company, defendant and appellee, the sum of three thousand five hundred dollars for each and every one of the years 1892, 1893, 1894, 1895, 1896, and 1897, with two *per cent.* per month interest upon each of said respective amounts from the first day of March of each one of said years respectively and ten *per cent.* upon the aggregate amount of said several sums, capital and interest, as attorneys' fees and all costs of both courts.

The right to apply for rehearing is reserved to both parties.

Final Judgment.

(Extract from the Minutes.)

NEW ORLEANS, TUESDAY, *March 7th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, associate justices.

Absent: Francis T. Nicholls, chief justice.

His honor the presiding justice pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING COMPANY. } No. 12877.

93 (On rehearing.)

It is ordered and decreed that our former judgment and decree be annulled and set aside, and it is further ordered and decreed that the judgment appealed from be likewise annulled and reversed; and, proceeding to render such judgment as should have been rendered by the judge *a quo*, it is adjudged and decreed that the State of Louisiana do have and recover of and from The American Sugar Refining Company, defendant and appellee, the sum of three thousand five hundred dollars for each and every one of the years 1892, 1893, 1894, 1895, 1896, and 1897, with two *per cent.* per month interest upon each of said respective amounts from the first day of March of each one of said years respectively, and ten *per cent.* upon the aggregate amount of said several sums, capital and interest, as attorneys' fees and all costs of both courts.

The right to apply for rehearing is reserved to both parties.

Stipulation Waiving Legal Delays to Apply for Rehearing.

Supreme Court of Louisiana.

STATE OF LOUISIANA
vs.
AMERICAN SUGAR REFINING CO. } No. 12877.

The plaintiff and appellant has no reason to complain of the decree rendered in its favor, and waives the right reserved to it to apply for a rehearing.

17th M'ch, 1899.

(Signed) E. H. McCALEB, JR.,
Attorney for Plaintiff and Appellant.

Defendant and appellee waive right to apply for rehearing.

17 March, 1899.

(Signed) THOS. J. SEMMES,
Att'y for Am. Sugar Ref. Co.

(Endorsed:) Supreme court of La. No. 12877. State of La. *vs.* Am. Sugar Ref. Co. Waiver of both parties of right to apply for rehearing. Filed March 17th, 1899. (Signed) T. C. McC. Hyman, clerk.

Petition for Writ of Error.

Supreme Court of Louisiana.

THE STATE OF LOUISIANA
vs.
THE AMERICAN SUGAR REFINING CO. } No. 12877.

94 The petition of the defendant in the above-entitled cause prays to be allowed a writ of error, with supersedeas, to have the decree herein reversed by the Supreme Court of the United States, so that the Federal question decided by the supreme court of Louisiana against the defendant be reversed. The defendant claimed in its answer that section nine of the license act of 1890 discriminated against this defendant and denied to it the equal protection of the law secured to all persons by the fourteenth amendment of the Constitution of the United States, and for that reason said section nine, by which a license tax was imposed on those who conducted the business of refining sugar who were not planters, was void. The opinion and decree of the court rejected this contention of the defendant.

(Signed) THOS. J. SEMMES,
Att'y for Pet'r.

Writ of error allowed, returnable in thirty days to the Supreme Court of the United States, with supersedeas, on giving bond in the sum of fifty thousand dollars.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

N. O., March 17, 1899.

(Endorsed:) No. 12877. Supreme court of Louisiana. The State of Louisiana *vs.* The American Sugar Refining Co. Petition of defendant and appellee for writ of error. (Signed) Thos. J. Semmes, att'y. Filed March 17th, 1899. (Signed) T. McC. Hyman, clerk.

Copy of Writ of Error and Endorsement.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of La., and The American Sugar Refining Company, No. 12877 of the docket, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under
95 the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said American Sugar Refining Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the said Supreme Court, the 17th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

(Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
—— ——.

(Endorsed:) No. 12877. American Sugar Refining Company, plaintiff in error, *versus* State of Louisiana and John Brewster, State tax collector, defendants in error. (Writ of error.) Copy of a writ of error lodged in the clerk's office of the supreme court of Louisiana, in pursuance of the statute in such cases made and provided, this 17th day of March, one thousand eight hundred and ninety-nine. (Signed) Thos. J. Semmes, attorney of plaintiff in error. Filed March 17th, 1899. (Signed) T. McC. Hyman, clerk.

96 *Bond for Writ of Error.*

Know all men by these presents that we, the American Sugar Refining Company, as principal, — the National Surety Company of New York, as surety, are held and firmly bound unto the State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of Louisiana, in the full and just sum of fifty thousand, $50,000, dollars, to be paid to the said State of Louisiana and the said John Brewster, State tax collector, as aforesaid, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17 day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a supreme court of Louisiana, in a suit depending in said court, wherein the said State of Louisiana and said John Brewster, State tax collector, as aforesaid, are plaintiffs and the said American Sugar Refining Company is defendant, judgment was rendered against the said American Sugar Refining Company, defendant, and the said American Sugar Refining Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana and the said John Brewster, State tax collector, as aforesaid, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, within 30 days from date hereof:

Now, the condition of the above obligation is such that if the said American Sugar Refining Company shall prosecute its writ to effect and answer all damages and cost if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) THE AMERICAN SUGAR REFINING COMPANY,
By its attorney, THOS. J. SEMMES. [L. S.]
Do. NATIONAL SURETY CO. [L. S.]
[SEAL.]
Do. JOS. H. DE GRANGE, *Resident Vice-President.* [L. S.]
Do. EDWIN SHELBY, *Resident Ass't Sec'*

Sealed and delivered in the presence of—

——— ———.

New Orleans, March 17, 1899.

Approved. (Signed) FRANCIS T. NICHOLLS,
9—264 *Chief Justice.*

97 (Endorsed:) No. 12877. Supreme court of the State of Louisiana. The State of Louisiana, The State of Louisiana and John Brewster, State tax collector, *vs.* The American Sugar Refining Company. Bond for writ of error. Filed March 17, 1899. (Signed) T. McC. Hyman, clerk.

Assignment of Errors.

THE AMERICAN SUGAR REFINING CO., Plaintiff in Error,
vs.
THE STATE OF LOUISIANA, Defendant in Error. } No. 12877.

Assignment of errors filed by The American Sugar Refining Co., plaintiff in error.

1. The supreme court of Louisiana has erred in holding that the provisos of section nine of the act of the General Assembly of Louisiana, by which planters are not subjected to the license tax imposed by that section, do not discriminate against the plaintiffs in error, and thereby deny to it the equal protection of the laws secured to all persons by the fourteenth amendment of the Constitution of the U. S.

2. Said court erred in holding that the business of sugar refining conducted by the plaintiff in error was not the business of a manufacturer of sugar, and therefore exempt from the payment of license taxes.

3. Said court erred in holding that the State was entitled to proceed by rule for the enforcement of the license taxes set forth in said rule.

(Signed) THOS. J. SEMMES,
Att'y for Pl'ff in Error.

(Endorsed:) Supreme court of La. No. 12877. American Sugar Refining Co. *vs.* State of Louisiana. Assignment of errors. Filed 17th March, 1899. (Signed) T. McC. Hyman, clerk.

98 *Agreement of Counsel as to Transcript.*

Supreme Court of Louisiana.

THE STATE OF LOUISIANA
vs.
THE AMERICAN SUGAR REFINING CO. } No. 12877.

It is agreed that the photographs and samples referred to in the testimony, being unnecessary to a comprehension of the process described by the witness McFeteridge, be dispensed with as part of the transcript to be sent to the Supreme Court U. S.

20 March, 1899.

(Signed) E. H. McCALEB, JR.,
Att'y for Pl'ff.

Do. THOS. J. SEMMES,
Per EDWARD RIGHTOR,
Att'y for Def'd't.

(Endorsed:) Supreme court of Louisiana. No. 12877. The State of Louisiana *vs.* American Sugar Ref. Co. Agreement of counsel as to transcript. Filed March 23rd, 1899. (Signed) Paul E. Mortimer, dep. clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing ninety-eight pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein The State of Louisiana and John Brewster, State tax collector of the second district for the parish of Orleans, State of Louisiana, were plaintiffs and The American Sugar Refining Company was defendant, and also of all the proceed-
99 ings had in this supreme court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under the number 12877.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this first day of April, anno Domini 1899, and in the one hundred and twenty-third year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and *the* full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this first day of April, anno Domini 1899, and in the one hundred and twenty-third year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice.

100 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of La., and The American Sugar Refining Company, No. 12877 of the docket, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Con-

101 stitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said American Sugar Refining Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the — day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
—— ——.

102 [Endorsed:] No. 12877. American Sugar Refining Company, plaintiff in error, *versus* The State of Louisiana & John Brewster, State tax collector, defendants in error. Writ of error. Filed March 17, 1899. T. McC. Hyman, clerk.

103 UNITED STATES OF AMERICA, }
Eastern District of Louisiana. }

The President of the United States to the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein The American Sugar Refining Company is plaintiff in error and The State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of Louisiana, are defendants in error, to show cause, if any there be, why the judgment rendered against the said American Sugar Refining Company, as in said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 17 day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

FRANCIS T. NICHOLS,
Chief Justice.

Service accepted; citation waived.

E. H. McCALEB, JR.,
Att'y for State of La.

M'ch 20, '99.

104 [Endorsed:] Supreme court. No. 12877. American Sugar Refining Company, plaintiff in error, *vs.* State of Louisiana and John Brewster, defendants in error. Citation. Marshal's return. Filed March 23rd, 1899. Paul E. Mortimer, dep. clerk.

105 THE UNITED STATES OF AMERICA, }
Eastern District of Louisiana. }

The President of the United States to John Brewster, State tax collector, second district, parish of Orleans, State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein The American Sugar Refining Company is plaintiff in error and The State of Louisiana and John Brewster, State tax collector, second district, parish of Orleans, State of Louisiana, are defendants in error, to show cause, if any there be, why the judgment rendered against the said American Sugar Refining Company, as in said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, this 17 day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

FRANCIS T. NICHOLLS,
Chief Justice.

Service accepted; citation waived.

E. H. McCALEB, Jr.,
Att'y — Jno. Brewster, Tax Collector.

M'ch 20, '99.

106 [Endorsed:] Supreme court. No. 12877. American Sugar Refining Company, plaintiff in error, *vs.* State of Louisiana & John Brewster, defendants in error. Citation. Marshal's return. Filed March 23rd, 1899. Paul E. Mortimer, dep. clerk.

Endorsed on cover: File No., 17,370. Louisiana supreme court. Term No., 264. The American Sugar Refining Company, plaintiff in error, *vs.* The State of Louisiana and John Brewster, State tax collector, 2nd district, parish of Orleans, State of Louisiana. Filed April 15th, 1899.